No. 126840

In the

Supreme Court of Illinois

GUNS SAVE LIFE, INC., *et al.*,

Plaintiffs-Appellants,

vs.

VILLAGE OF DEERFIELD, ILLINOIS, *et al.*,

Defendants-Appellees.

On Appeal from the Appellate Court of Illinois,
Second Judicial District, No. 2-19-0879,
There heard on appeal from the Circuit Court of
Lake County, Illinois, No. 18 CH 427
The Honorable Luis A. Berrones, Judge Presiding.

BRIEF OF DEFENDANTS-APPELLEES

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POINTS AND AUTHORITIES

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NATURE OF THE ACTION

In 2013, the General Assembly amended the Illinois FOID Act, 430 ILCS 65/13.1 (West 2018), to specifically address assault weapons and permit home rule municipalities to regulate and impose an outright ban on these dangerous weapons. In the wake of the General Assembly's actions, consistent with the provisions of the FOID Act, 430 ILCS 65/13.1 (West 2018), the Village of Deerfield ("Deerfield")[1] adopted an ordinance regulating these weapons. Deerfield's 2013 ordinance defined the terms "assault weapon" and "large capacity magazine," and provided strict regulations for the safe storage and transportation of these weapons. In 2018, following the deadly shooting at the Marjory Stoneman Douglas High School in Parkland, Florida, Deerfield amended its 2013 Ordinance to impose a complete ban upon assault weapons and large capacity magazines (collectively the "2018 Amended Ordinances").

On December 7, 2020, the Second District Appellate Court issued a thoughtful and detailed opinion on the matter. It found that Deerfield's ban on assault weapons and large capacity magazines was not preempted by the FOID Act, and that Deerfield's 2018 Ordinance was properly construed as an amendment of its 2013 Ordinance, regulating these highly dangerous weapons. The opinion further reinforced the central principles of home rule authority that are the cornerstone of the 1970 Illinois Constitution.

The question presented by this appeal is whether Deerfield's 2018 Amended Ordinances, banning assault weapons and large capacity magazines, are a proper amendment of its 2013 Ordinance. Thus, the instant case is limited to the interpretation of

[1] The Easterday and GSL cases were consolidated in the Circuit Court, in the Second District, as well as here in the Illinois Supreme Court. The Plaintiffs-Appellants have filed separate briefs in this action, to which Deerfield responds in this single brief.

Illinois home rule law and whether jurisdiction was proper. It does not involve a challenge under the Second Amendment to the United States Constitution.

ISSUES PRESENTED

1. Whether Deerfield's ban on assault weapons and large capacity magazines is enforceable and not preempted by the General Assembly, as held by the Second District Court of Appeals?

2. Whether the Second District correctly determined that Village of Deerfield's 2018 amendments of its 2013 Ordinance were appropriately considered amendments to the 2013 Ordinance and were consistent with the type of amendment contemplated by the General Assembly when it debated and adopted the 2013 amendments to the Illinois FOID Act?

3. Whether the Second District Court of Appeals properly found that the two cases encompassing this appeal were consolidated by the Circuit Court, such that they were merged, thereby giving it jurisdiction to rule on Deerfield's appeal?

STANDARD OF REVIEW

Whether Deerfield's 2018 ordinances are proper amendments, and as such not preempted by statewide law, is a question of interpretation of ordinances and statutes, which is reviewed *de novo. Stasko v. City of Chicago*, 2013 IL App (1st) 120265, ¶ 31. The Circuit Court's March 22, 2019 decision was a determination on a motion for summary judgment, as was the Second District's decision reversing that judgment. Decisions on motions for summary judgment are reviewed *de novo*. *Id*. Likewise, the Illinois Appellate Court's determination of its jurisdiction is reviewed *de novo*. *JPMorgan Chase, N.A. v. Ontiveros*, 2015 IL App (2d) 140145, ¶ 19. While, as stated below, the Circuit Court's September 6, 2019 order consolidating the two cases is final

and unappealable, orders on consolidation are reviewed for abuse of discretion. *Peck v. Peck*, 16 Ill. 2d 268, 275 (1959) (finding no abuse of discretion where the consolidation order "specifically found that common questions of law and fact existed in both causes, that it would be a convenience to all parties to have their rights determined in one hearing, and that no rights would be prejudiced by the consolidation of the actions.").

JURISDICTION

Pursuant to Illinois Supreme Court Rule 315, this Court has jurisdiction over the instant consolidated action. When this Court allowed Plaintiffs' petitions for leave to appeal, it consolidated *Easterday v. Vill. of Deerfield*, No. 126840 with *Guns Save Life, Inc. v. Vill. of Deerfield*, No. 126849. *See Guns Save Life, Inc. v. Vill. of Deerfield*, No. 126849, 2021 WL 1226740 (Ill. March 24, 2021) (App. 23). Pursuant to Illinois Supreme Court Rule 315, this Court may review the Second District's determination of its appellate jurisdiction as well as the merits of the Circuit Court's March 22, 2019 Memorandum Opinion.

Although both the Easterday and the Guns Save Life, Inc. ("GSL") Appellants purport to assert challenges to the Circuit Court's September 6, 2019 Order making findings pursuant to Illinois Supreme Court Rule 304(a) and confirming the scope of its July 27, 2018 consolidation order, neither set of Appellants filed a cross-appeal with the Second District properly seeking to reverse that Circuit Court Order. Thus, that Order is final and binding and is not on appeal. *Ruff v. Indus. Comm'n of Illinois*, 149 Ill. App. 3d 73, 78–79 (1st Dist. 1986).

CONSTITUTIONAL PROVISIONS, STATUTES, AND ORDINANCES INVOLVED

1970 Illinois Constitution

Article VII, Section 6. POWERS OF HOME RULE UNITS

(a) A County which has a chief executive officer elected by the electors of the county and any municipality which has a population of more than 25,000 are home rule units. Other municipalities may elect by referendum to become home rule units. Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.

. . .

(h) The General Assembly may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit other than a taxing power or a power or function specified in subsection (l) of this Section.

(i) Home rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State‘s exercise to be exclusive.

. . .

(m) Powers and functions of home rule units shall be construed liberally.

The Firearms Owners Identification Card Act, 430 ILCS 65/13.1 *et seq*.

Sec. 13.1. Preemption.

(a) Except as otherwise provided in the Firearm Concealed Carry Act and subsections (b) and (c) of this Section, the provisions of any ordinance enacted by any municipality which requires registration or imposes greater restrictions or limitations on the acquisition, possession and transfer of firearms than are imposed by this Act, are not invalidated or affected by this Act.

(b) Notwithstanding subsection (a) of this Section, the regulation, licensing, possession, and registration of handguns and ammunition for a handgun, and the transportation of any firearm and ammunition by a holder of a valid Firearm Owner‘s Identification Card issued by the

Department of State Police under this Act are exclusive powers and functions of this State. Any ordinance or regulation, or portion of that ordinance or regulation, enacted on or before the effective date of this amendatory Act of the 98th General Assembly that purports to impose regulations or restrictions on a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act in a manner that is inconsistent with this Act, on the effective date of this amendatory Act of the 98th General Assembly, shall be invalid in its application to a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act.

(c) Notwithstanding subsection (a) of this Section, the regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State. Any ordinance or regulation, or portion of that ordinance or regulation, that purports to regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act, shall be invalid unless the ordinance or regulation is enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly. Any ordinance or regulation described in this subsection (c) enacted more than 10 days after the effective date of this amendatory Act of the 98th General Assembly is invalid. An ordinance enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly may be amended. The enactment or amendment of ordinances under this subsection (c) are subject to the submission requirements of Section 13.3. For the purposes of this subsection, "assault weapons" means firearms designated by either make or model or by a test or list of cosmetic features that cumulatively would place the firearm into a definition of "assault weapon" under the ordinance.

(d) For the purposes of this Section, "handgun" has the meaning ascribed to it in Section 5 of the Firearm Concealed Carry Act.

(e) This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.

Village of Deerfield Ordinances:

O-13-24

O-18-06

O-18-19

*The full text of these three ordinances are at C 381-402, appended hereto as A-044, A-051, and A-062.

STATEMENT OF FACTS

In the spring of 2018, following a series of tragic mass shootings, including those in Las Vegas, Nevada and Parkland, Florida, Deerfield amended its ordinance regulating assault weapons and large capacity magazines to impose a ban on the possession of these weapons. (C 343-352, A-051)[2] Deerfield enacted this amendment in order to address the concerns of parents, students, and citizens, which came at an alarming rate following these mass murders. (C 195) In order to provide the background and history pertinent to the instant matter, this section will: 1) outline pertinent demographic and commercial aspects of Deerfield; 2) discuss certain, selected, recent mass shooting incidents; 3) review the 2013 Amendments to the FOID Act and a history of Deerfield's Ordinances regulating assault weapons and large capacity magazines; and 4) discuss the procedural history of this litigation.

I. The Village of Deerfield.

Deerfield is a home rule municipality with more than 18,000 residents living across more than five square miles. (C 777) Deerfield's elementary schools are served by School District 109 which is comprised of four public elementary schools and two public middle schools. *Id*. Deerfield High School, a top ranked school in the state of Illinois, is in School District 113. *Id*. Deerfield is also home to a handful of private schools. *Id*.

Aside from impressive educational opportunities, Deerfield boasts a number of corporate headquarters and a thriving commercial district. Walgreens, Baxter International, Beam Suntory, CF Industries, Caterpillar, Consumers Digest, Fortune Brands Home & Security, Mondelez International, United Stationers, and the North

[2] Deerfield will cite to materials in the Common Law Record as "C," materials in the Report of Proceedings as "R," and materials in the attached appendix as "A."

American operations for Takeda Pharmaceutical Company have corporate headquarters located in Deerfield. *Id*. Deerfield's commercial district includes Deerfield Square, which is composed of stores, restaurants, workout facilities and other retail establishments, and contains an outdoor plaza which operates as a venue for free outdoor concerts. *Id*. Moreover, Deerfield is home to a Farmer's Market, Public Library, and the Patty Turner Center for senior adults. *Id*. It also hosts a number of public events throughout the year. *Id*.

Deerfield's emphasis on education, commerce, and community, means that it also shares a profile with similar communities across the county that have all too often suffered violence from assault weapons.

II. Mass Shooting Incidents

A "mass shooting," as defined by the Congressional Research Service, is a "multiple homicide incident in which four or more victims are murdered with firearms, within one event, and in one or more locations in close proximity." *Id.* Since 2011, mass shootings involving multiple homicides and injuries have occurred with increasing frequency and with greater losses of life. (C 778, citing Morris, S., "Mass Shootings in the United States," The Guardian, February 15, 2018) These include:

Date	**Location**	**Persons Killed**	**Persons Injured**
January 8, 2011	Tucson, Arizona	6	14, including U.S. Representative Gabrielle Giffords
July 20, 2012	Aurora, Colorado	12	58
September 16, 2013	Washington, D.C. Navy Yard	13	8
June 17, 2015	Charleston, South Carolina	9	1
December 2, 2015	San Bernardino, California	14	22

June 12, 2016	Orlando, Florida	50	53
October 1, 2017	Las Vegas, Nevada	58	851
November 5, 2017	Sutherland Springs, Texas	26	20

Id.

Mass shooting incidents have all too often affected schools, students, and teachers in communities like Deerfield. On December 14, 2012, a mass shooting occurred at Sandy Hook Elementary School in Newton, Connecticut, which resulted in the tragic deaths of 26 people, including 20 first graders between the ages of 6 and 7. *Id.* Unfortunately, this tragedy was not an isolated incident. On October 1, 2015, a mass shooting occurred at Umpqua Community College in Roseburg, Oregon, which left 10 people dead and another 8 wounded. *Id.* On February 14, 2018, at the Marjory Stoneman Douglas High School in Parkland, Florida, 17 people were killed and another 17 were injured. *Id.*

At the time the amendments were passed in 2018, Deerfield residents were well aware that mass shootings are not remote incidents far removed from the suburbs of Chicago. On May 20, 1988, Laurie Dann killed one student and wounded eight others when she attacked the Hubbard Woods school in the nearby Village of Winnetka, and then took a local family hostage before killing herself. (C 779)

III. Deerfield's Ordinances on Assault Weapons and Large Capacity Magazines.

In 2013, the General Assembly adopted amendments to the FOID Act, 430 ILCS 65/13 (West 2018) (the "FOID Act"). (C 779) It also enacted the Firearm Concealed Carry Act, 430 ILCS 66/90 (West 2018) (the "FCCA"). *Id.* Under these laws, the State of Illinois and home rule municipalities like Deerfield share concurrent jurisdiction over

assault weapons and large capacity magazines. (C 950) As long as a home rule unit adopted a restriction on assault weapons prior to the 2013 Amendments to the FOID Act, or within 10 days after the effective date of the 2013 Amendments, it would maintain its jurisdiction over these weapons. *Id*. Importantly, once a home rule unit had adopted a measure concerning assault weapons in a timely manner, that measure "may be amended." 430 ILCS 65/13.1(c) (West 2018). In contrast, a home rule unit that did not establish a regulation of assault weapons prior to or within 10 days after the effective date of the amendments would lose its concurrent jurisdiction over these weapons. In those cases, the General Assembly would have exclusive jurisdiction to legislate on matters involving assault weapons and large capacity magazines.

On June 17, 2013, the Village of Deerfield held a Village Board Meeting (the "Board Meeting") to discuss the potential adoption of an ordinance that would regulate the possession of assault weapons in the Village of Deerfield. (C 1187-1189) During the Board Meeting, Illinois State Representative Scott Drury (58th District) gave testimony to the Board regarding the importance of adopting an ordinance that would regulate the possession of assault weapons. *Id*.

During the June 17, 2013 Village Board meeting, Scott Drury stated:

> The history was, you know, at least in part, I commended a roundtable meeting at my office last week just to present the facts of House Bill 183, not pushing for any specific agenda but talking about the tight timelines that are in place with this 10-day limit.
>
> There's been talk today about we want local control, we don't want powerful government. What the State of Illinois did when it passed House Bill 183, was it took—it was a massive powerplay on the part of the State, an uncalled for powerplay. You said that this issue is about safety but this issue's actually about home rule and local control. What the

> State wants to do is take away a power that the Village of Deerfield has, the power to regulate assault weapons, and it's a regulation. You've chosen to make the regulation safety-related in the way they'll be stored. That's your right to do. If you don't put this ordinance into place, you will forever lose it, and that's, I think, the important point that needs to be underscored. There was some talk about that, but it is a use or lose provision.
>
> We don't know what the future is going to bring in Deerfield. So, the proper thing, the responsible thing I think for the trustees and the Village to do is to put the ordinance in place so that you can then or future mayors and future trustees can decide and mold this ordinance the way you want it to be. I think recent events in Highland Park and Highwood have shown that we never know what's going to happen in our communities. For many years, everyone thinks Highland Park and Highwood are safe and I think they are, but there was a murder in Highwood and Highland Park last week. Do I think we need to put massive controls in place, no. But our communities are not beyond the violence that we read about in the city, that we read about in the papers from across the State and across the world. And if we give up the right to control our local communities, what's next? This was a bill that was proposed by House Speaker Mike Madigan.
>
> I'm always told when are ever going to stand up to the Speaker of the House. Well, this is an opportunity to do this. This is what I'm doing. We have the power here. You have the power here to put this ordinance into place and amend it as you see fit. But I think the responsible thing to do, the important thing to do is to have the regulation. There're many people here speaking against this ordinance. I submit to you that this is the minority of the people in this district.

Id.

During the June 17, 2013 Village Board meeting, Aaron Broaddus, a resident of Deerfield stated:

> So, essentially if you put this in place now even though it only concerns safe storage or is limited in scope that you could potentially have an assault weapon banned at some point in the future if you decide to do that?...

> I think the main concern here is that that's what's going to happen down the road because the comments that I've heard quoted to the Mayor and certainly representative jury and a lot of the people that are anti-gun would suggest that it's only a matter of time before this goes into effect. And, I can tell you personally as far as business impacting business in Deerfield, I was about to start on a home renovation project and basically as soon as I found out about this, I called the business owner and don't bother applying for the permits cause I'm not doing anything until I know what happens with all this stuff. And, that was a six-figure project and he's very unhappy about it. So, it will have real consequences.

Id.

Harriet Rosenthal ("Rosenthal"), the President of the Village of Deerfield, understood that municipalities such as Deerfield could adopt restrictions on assault weapons and large capacity magazines, including a ban on such weapons, provided the municipality adopted such a restriction within 10 days after the enactment of the July 9, 2013 amendments of the FOID Act. *Id*. It was also Rosenthal's understanding that any ordinance restricting assault weapons and large capacity magazines could later be amended by that municipality pursuant to 430 ILCS 65/13.1(c) (West 2018). *Id*.

On July 1, 2013, eight days prior to the effective date of the Illinois amendments to the Act, the Village of Deerfield Board of Trustees adopted Ordinance No. O-13-24. (C 397-402, A-044) Ordinance O-13-24 created regulations for the safe storage and handling of assault weapons, defined terms for what constituted an assault weapon and large capacity magazines, and also provided for penalties in the event that the strictures of Ordinance O-13-24 were violated. *Id*. Deerfield adopted Ordinance O-13-24 in recognition of the extreme danger posed by assault weapons, and in an attempt to stem or otherwise prevent the use of assault weapons to carry out acts of violence. (C 1187-1189)

During the Spring of 2018, members of the Board of Trustees for the Village of Deerfield engaged in a series of meetings to discuss the best way to avoid the occurrence of mass shootings in Deerfield. (C 1192-1198) Deerfield understood that the 2013 Ordinance was only the first step towards protecting the health, safety and welfare of all of its residents and visitors. *Id*. By taking an initial step towards removing assault weapons from the presence of the general public, the Village intended to allow itself time to survey the landscape and make concerted decisions regarding the most appropriate and effective ways to address the issue of assault weapons and the harm they cause. (C 1192-1198) During the four years following the adoption of the 2013 Ordinance, Deerfield decided that the restrictions encompassed in the 2013 Ordinance were insufficient to protect the safety and welfare of its residents and visitors. *Id*.

Following the shooting at the Marjory Stoneman Douglas High School in Parkland, Florida on February 14, 2018, the Board of Trustees began hearing from concerned residents, parents, and students demanding to know what Deerfield would do to ensure the safety of its citizens and to make every effort to stop the same type of tragedies from occurring in Deerfield's schools and public gathering places. (C 343-352) After considering the scope of the 2013 Ordinance and similar ordinances, the Board of Trustees for the Village of Deerfield determined that the correct course of action would be to amend the 2013 Ordinance to adopt a complete ban on assault weapons and large capacity magazines within the Village of Deerfield. (C 1192-1198)

On April 2, 2018, the Village of Deerfield's Board of Trustees adopted Ordinance O-18-06 to impose more significant restrictions on the possession of assault weapons and large capacity magazines within its jurisdiction. (C 387-388) The amendment was at all

times intended to be an amendment to the 2013 Ordinance and not a replacement of that Ordinance. *Id*.

The 2013 Ordinance was specifically drafted to allow for amendments that could increase the restrictions placed on assault weapons and large capacity magazines to the extent such amendments were deemed appropriate by the Village of Deerfield's Board of Trustees. *Id*. During the process of amending the 2013 Ordinance, the Board of Trustees worked from the 2013 Ordinance as a template and left unaffected its structure and core aspects. *Id*. The portions of the 2013 Ordinance identifying and defining an assault weapon, muzzle compensator (silencer), detachable magazines and large capacity magazines were not affected by the 2018 Amended Ordinances *Id*. The 2018 Amended Ordinances retained the protections for law enforcement and military personnel. *Id*. They also maintained the civil penalties outlined in the 2013 Ordinance. *Id*. The purpose of the 2018 Amended Ordinances was to increase the protections provided by the 2013 Ordinance to impose a complete ban on assault weapons and large capacity magazines in Deerfield. *Id*.

On June 12, 2018, the Circuit Court of Lake County issued a temporary restraining order, enjoining Deerfield from enforcing its ban on assault weapons and large capacity magazines. (C 79-100) As part of its Order, the Court found that Deerfield's Ordinance, O-18-06, had failed to include language expressly banning the possession and ownership of magazines capable of holding more than 10 rounds of ammunition. *Id*. In response, on June 18, 2018, the Village of Deerfield Board of Trustees adopted Ordinance O-18-19. (C 391-395, A-062) Ordinance 0-18-19 states that it is unlawful to possess, bear, manufacture, sell, transfer, transport, store or keep any

large capacity magazine in the Village. *Id*. Ordinance O-18-19 also provides that large capacity magazines are subject to the same exceptions provided for the possession, use, manufacture, transport, transfer, storage, keeping, and sale of assault rifles. *Id*.

IV. Procedural History

After entering its June 12, 2018 temporary restraining order preventing Deerfield from enforcing its ban and allowing additional briefing on Plaintiffs' Request for a Preliminary Injunction, the Circuit Court held an evidentiary hearing on October 12, 2018. (R. 149-271) At that hearing, Plaintiffs presented no witnesses. For its part, Deerfield called both its Mayor, Harriet Rosenthal, and its Village Manager, Kent Street, who both testified concerning the purpose and intent of the 2013 Ordinance imposing the initial restrictions on assault weapons and large capacity magazines. *Id.* They also testified that Deerfield's understanding was that it needed to take action regulating assault weapons prior to the effective date of the FOID Act in order to preserve its home rule authority over these weapons, and to allow it to amend the ordinance in the future. *Id.* Both Ms. Rosenthal and Mr. Street also testified that Deerfield, and residents both in favor and opposed to the 2013 Ordinance, recognized that a future amendment might include a complete ban on the possession and ownership these weapons. *Id.*

At the October 12, 2018 hearing, the Court also received the video record from the public hearings at the time Deerfield adopted the 2013 Ordinance, O-13-24. That video record included the testimony of Illinois State Representative Scott Drury concerning the General Assembly's intent when it adopted the FOID Act provisions concerning assault weapons. (C 1187-1189)

On March 22, 2019, in response to a motion for preliminary injunction and a motion for summary judgment, the Circuit Court of Lake County issued a Memorandum

Opinion permanently enjoining Deerfield's ban on assault weapons. (C 236-259) The Circuit Court held that despite the language expressly permitting home rule units to regulate assault weapons, the FOID Act amendments had the effect of totally preempting any such regulation, thus barring Deerfield from exercising concurrent jurisdiction and adopting any such regulation. (C 252-253) The Court further held that even if the FOID Act amendments had permitted local regulation, the 2018 Ordinance should be considered an entirely new Ordinance rather than a permissible amendment of the 2013 Ordinance. (C 256)

As the Second District found on appeal, and as set forth more fully below, the Circuit Court's decision misinterpreted the General Assembly's unique, hybrid approach to the regulation of assault weapons and large capacity magazines, which provides for the concurrent authority of the State and home rule units over these weapons. Thus, Deerfield appealed the Circuit Court's decision. Initially, there were questions regarding whether Deerfield's appeal to the Second District properly encompassed both cases. Deerfield filed a Rule 304(a) motion to immediately appeal, which the Circuit Court granted on September 6, 2019. In doing so, the Circuit Court affirmed that the underlying cases had been consolidated for all purposes. A-011. The Second District determined that the Circuit Court's Rule 304(a) order provided a basis for jurisdiction. *Id*. The Second District affirmed in part and reversed in part the Circuit Court's ruling, but only the Second District's reversal is at issue here. *See generally,* A-001.

In reversing the Circuit Court, the Second District found that Deerfield's 2018 Ordinances were not preempted by the FOID Act. A-019. It therefore vacated the Circuit Court's injunction with respect to Deerfield's assault weapon and large capacity

magazine ban. *See generally,* A-001. In rendering its opinion, the Court noted that its goal in interpreting a statute is to ascertain and effectuate the legislature's intent. A-012. Taking the statue as a whole, the Second District found that "it is apparent that the legislature did not intend to preempt all regulation of assault weapons by home rule units." A-019. Rather, the legislature put in place a "hybrid balance of regulatory power between the state and local governments." *Id*. Thus, it concluded that the trial court erred in determining that Section 13.1 of the FOID Act preempts all regulation of assault weapons by home rule units. *Id*. Additionally, the Second District found that the ordinance "may be amended" as reflected by the General Assembly's intent in using that phrase. Deerfield therefore properly amended its 2013 ordinances. A-029.

On January 8, 2021, Appellants filed their petitions for leave to appeal the Second District's order to this Court pursuant to Illinois Supreme Court Rule 315. App 176 to GSL's Appellant Brief. This Court granted leave to appeal on March 24, 2021.

ARGUMENT

I. Deerfield's 2018 Ordinances Amending the 2013 Ordinance are Proper.

A. The Second District Correctly Determined that FOID Act Expressly Provides for Limited Concurrent Home Rule Jurisdiction Over Assault Weapons.

The Second District correctly determined that the FOID Act did not preempt home rule jurisdictions from regulating, or even banning, assault weapons. Both Appellants contend that this was in error. However, Appellants cannot overcome the plain language at the heart of this case, and central to the Second District's opinion.

When it enacted the FCCA and amended the FOID Act in 2013, the General Assembly established a hybrid form of concurrent jurisdiction over assault weapons. Importantly, Section 13.1(c) of the FOID Act expressly provides the State with exclusive

jurisdiction over assault weapons, *unless* a home rule unit adopted its own regulations on, before, or within 10 days of the new law. The so-called "10-day window" is an example of the General Assembly's deliberate exercise of concurrent jurisdiction, as authorized by the Illinois Constitution. There is no basis for ignoring this unique language.

Pursuant to Section 13.1(c) of the FOID Act, once a home rule unit has adopted an assault weapons regulation, any such regulation "may be amended." This is a "use it or lose it" statute, as acknowledged by State Representative Scott Drury at Deerfield's public Village Board meeting. (C 1187-1189) Thus, as long as a home rule unit exercised its authority within the window provided by the General Assembly, it can amend the ordinance as it sees fit. Indeed, the General Assembly expressly recognized that a home-rule jurisdiction such as Deerfield, could regulate assault weapons as an initial step and then adopt a complete ban as a later amendment. Deerfield did just this. Deerfield adopted its 2013 Ordinance regulating assault weapons prior to the effective date of the 2013 legislation, and with that step, gained the authority to amend its ordinance at a later point in time. As the Second District noted, Deerfield invoked the FOID Act's exemption to the State's exclusive jurisdiction when it passed O-13-24, as it intended "to regulate the possession or ownership of assault weapons in a manner that is inconsistent with th[e] Act." 430 ILCS 65/13.1(c) (West 2018).

As the Second District found, "we should embrace an interpretation [of the statute] that gives a reasonable meaning to each word, clause and sentence without rendering any language superfluous." A-012. Accordingly, "it is apparent that the legislature did not intend to preempt all regulation of assault weapons by home rule units." A-019. Rather, "the legislature contemplated a hybrid balance of regulatory power

between the State and local governments whereby certain home rule units would have the authority to concurrently regulate assault weapons and others would not." *Id*. "In other words, the legislature *intended* that home rule units would be precluded from regulating assault weapons *unless they took steps, within the prescribed timeframe, to regulate the possession or ownership of assault weapons in a manner that is inconsistent with the FOID Card Act*." *Id*. (emphasis added).

Appellants' arguments are inconsistent with this thoughtful reasoning, and further ignore the express intent of the General Assembly. As the Second District recognized, we "must look at the statute as a whole, taking into consideration its nature, its purposes and the evil the statute was intended to remedy." *Hinsdale Golf Club v. Kochanski,* 197 Ill.App. 3d 634, 637 (2d Dist. 1990). Rather than doing that here, Appellants ignore these canons of statutory construction and the principles favoring concurrent jurisdiction whenever possible. They also ignore the *actual language* of Section 13.1(c).

The mere fact that Section 6(h) of the Illinois Constitution is referred to in the language of the FOID Act is not dispositive as Appellants suggest. Rather, it is evidence of the General Assembly's intention to limit authority for those home rule units that act within the specified time, and preempt, pursuant to Section 6(h), those home rule units that fail to act. *Schillerstrom Homes, Inc. v. City of Naperville*, 198 Ill. 2d 281, 287 (2001) (citing to Section 6(h) for the proposition that "the General Assembly can expressly limit the exercise of home rule power."); *City of Evanston v. Create, Inc.*, 85 Ill. 2d 101, 115 (1981) (noting home rule units have the power to act concurrently with the State "except where those powers are specifically limited by express legislative action under sections 6(g) and 6(h) of article VII.");

Appellants contend that the legislature should have cited to Section 6(i) if it intended to limit, but still permit, home rule units' ability to act. However, Section 6(i) provides that "Home rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive." Ill. Const. 1970, art. VII, § 6(i); *Schillerstrom Homes, Inc.*, 198 Ill. 2d at 287 ("If the legislature chooses not to act, a local ordinance and a state statute may operate concurrently under article VII, section 6(i)."); *Gurba v. Cmty. High Sch. Dist. No. 155*, 2015 IL 118332, ¶ 13 (applying Section 6(i) where the General Assembly had not enacted any statute expressly preempting or limiting the home rule unit's zooming powers over public school property under Section 6(h)). The language of Section 6(i) makes clear that it is applicable when the General Assembly does not specifically limit home rule units' authority. *Id.* Importantly, that is not the case here. Rather, the General Assembly *specifically limited the exercise of authority of the home rule units*.

Moreover, the Appellants' suggested reading is not practical. A number of home rule units in the state have enacted assault weapons ordinances and bans. Some, like Cook County, enacted the ban before the FOID Act amendments. The Appellants' reading -- declaring that the FOID *limited* home rule units -- would run afoul of the legislature's clear intent by finding that no home rule unit, no matter when enacted or amended, could enforce assault weapons ordinances or bans.

Unlike the home rule units in *Iwan Ries & Co. v. City of Chicago*, 2019 IL 124469, relied upon heavily by Appellants, Deerfield, and other home rule units within

the state, acted within the period set forth by the General Assembly and invoked concurrent jurisdiction over assault weapons. The plain language of the statute provides for amendment following that initial action, which is exactly what Deerfield properly did. Unlike *Iwan*, Deerfield acted within the time frame specified by Section 13.1(c). Appellants' contention that that the General Assembly provided only for exclusive state jurisdiction ignores both the text and the legislative history of the FOID Act. As the Second District properly recognized, the FOID Act, 430 ILCS 65/13.1(c), expressly permits home rule municipalities to regulate assault weapons, including implementing an outright ban on these weapons.

B. Deerfield Properly Amended Its 2013 Ordinances.

Appellants also challenge the Second District's conclusion that Deerfield's 2018 amendments banning assault weapons and large capacity magazines should not be considered proper "amendments" to its 2013 Ordinance. Appellants contend instead that the amendments should be treated as entirely new legislation. In support of this interpretation, GSL cites to BLACK'S LAW DICTIONARY (11th ed. 2019), which states that an amendment is ordinarily "a formal, usually minor revision or addition." However, this citation does not indicate a prohibition on larger amendments, it only notes that amendments are usually minor. Additionally, GSL cites to no Illinois case law finding that in order to be consider an "amendment" the revision must be minor. To the contrary, Illinois law supports the proposition that amendments can be large. *See, e.g., Lamar Whiteco Outdoor Corp. v. City of West Chicago*, 355 Ill. App. 3d 352, 354-56 (2d Dist. 2005). The Second District properly rejected this argument. Appellants' arguments

are particularly misplaced given the express discussion of this question by the General Assembly at the time it passed the 2013 amendments to the FOID Act.

Deerfield preserved its right to regulate assault weapons when it enacted its 2013 ordinance. By acting prior to the expiration of the 10-day window in 2013, Deerfield preserved its authority to act concurrently with the State on questions of assault weapons. The legislature plainly stated in Section 13.1(c) that the home rule units could amend their ordinances, once they preserved their power to regulate these weapons. *See* 430 ILCS 65/13.1(c) (West 2018) ("An ordinance enacted on, before or within 10 days after the effective date of the amendatory Act of the 98th General Assembly ***may be amended***." (emphasis added)). This explicit language provides for amendment, as long as the home rule unit timely adopted a regulating ordinance. The court is bound to this explicit language in its interpretation of the statute, and thus Appellants' arguments fail under a reading of the plain language of the statute.

Because the language of the 2013 Ordinance and the 2018 Amended Ordinances is at issue, this Court must interpret the language of those ordinances. In interpreting ordinances, the Court's goal is to ascertain and effectuate the legislative body's intent. *See, e.g., Fox Valley Families against Planned Parenthood v. Planned Parenthood of Ill.,* 2018 IL App (2d) 170137, ¶13; *WV Marina Mgmt. Corp. v. Weiner,* 378 Ill. App. 3d 887, 890 (2d Dist. 2008). "Effect should be given to the intention of the drafters by concentrating on the terminology, its goals and purposes, the natural import of the words used in common and accepted usage, the setting in which they are employed, and the general structure of the ordinance." *See, e.g., Fox Valley Families against Planned Parenthood v. Planned Parthood of Ill.,* 2018 IL App (2d) 170137, ¶13 (quoting

Monahan v. Village of Hinsdale, 210 Ill. App. 3d 985, 993 (2d Dist. 1991) (internal quotations omitted)). Each of these factors favors construing the 2018 Ordinances as amendments of O-13-24.

Deerfield unequivocally classified O-18-06 and O-18-19 as ordinances "amending" O-13-24 - not just in their titles, as Appellants suggest, but also in their legislative text as well. (*see* C 380-390 (using variant of "amend" six times in text, including in Whereas clauses and Section 2); C 391-295 (using variant of "amend" five times in text, including in Whereas clauses and Section 2)) O-18-06 unambiguously sets forth its goal to amend O-13-24 to generally prohibit the possession, manufacture, and sale of assault weapons in the Village in order to enhance public safety, consistent with the original aims of O-13-24. (*See, e.g.,* C 381-84, C 392) The "terminology" of each ordinance, the "natural import" of its words in their "common and accepted usage," and its "goals and purposes" establish that Deerfield intended to amend O-13-24, and not to replace it or create a new ordinance.

Moreover, the "setting" in which Deerfield employed those words is consistent only with an amendment, not a wholly new law. O-18-06 and O-18-19 were passed against the backdrop of the FOID Act's provision for home rule regulation of assault weapons and the explicitly stated option for amendment for any home rule unit that elected to preserve concurrent jurisdiction. It was widely understood by legislators, and others, that O-13-24 could later be amended to ban assault weapons. (C 1187-89, C 1217-18) Other Illinois municipalities had previously amended firearm regulations to ban assault weapons, as acknowledged by the Seventh Circuit Court of Appeals in *Wilson v. Cook Cnty.,* 927 F.3d 1028 (7th Cir. 2019). In rejecting a Second Amendment Challenge,

the Seventh Circuit in *Wilson* characterized Cook County's assault weapons ban enacted "[i]n November 2006" as "an amendment to the Cook County Deadly Weapons Dealer Control Ordinance." *Id.* at 1029. The "setting" for the 2018 Ordinances thus reveals and legitimizes Deerfield's intent to similarly amend its regulations on assault weapons to enact a general ban.

Finally, the "general structure" of both ordinances is such that they are intermingled with O-13-24, modifying its prior language by redline and retaining the vast majority of it, including all its definitions. This shows evidence, beyond the title of the ordinance, of the intent to amend rather than enact new law. Additionally, the cases cited to by Appellants in support of this contention are inapplicable. Specifically, *Michigan Ave. Nat. Bank v. Cty. of Cook*, 191 Ill. 2d 493, 506 (2000) and *Murphy-Hylton v. Lieberman Mgmt. Servs., Inc., 2016 IL 120394* do not contemplate the question of whether an ordinance should be considered an amendment to a prior ordinance. Likewise, although statutes were previously amended in *People v. Gutman*, 2011 IL 110338 and *Hayashi v. Illinois Dep't of Fin. & Pro. Regul.*, 2014 IL 116023, the court was not determining whether amendments were only amendments rather than new law. Moreover, *State v. Cain,* 8 W.Va. 720 (1875), applies the law of another state and discusses an amendment by implication, and is thus inapplicable here.

As the Second District made clear, Appellants' reliance on *Athey v. City of Peru,* 22 Ill. App. 3d 363 (3d Dist. 1974), is misplaced. In *Athey*, the court recognized that the municipality had ambiguously and "interchangeably" referred to its subsequent ordinance as both an "amendment" and a "new law," necessitating a detailed side-by-side inspection of the two statutes. *Id.* at 367. Here, however, the 2018 Ordinances clearly and

unequivocally provide that they are amendments to O-13-24, and there is no suggestion, nor can Appellants point to any such suggestion, that any responsible party or person characterized them as "new laws."

In this case, the Second District stated: "Unlike in *Athey*, there is no need to undertake a comparative analysis of Deerfield's ordinances." A-027. Deerfield made clear its intent for the 2018 ordinances to act as amendments to the 2013 ordinance. In interpreting ordinances, the Court's goal is to ascertain and effectuate the legislative body's intent. A-012. The titles as well as the introductory paragraphs reflected that intent. A-027. Additionally, "[a]ll changes were reflected by striking through the language that was to be removed from the municipal code and underlining language to be added." *Id*. Thus, the Second District found *no ambiguity* in Deerfield's intent. *Id*.

The dispositive issue is whether "there was [a] manifestation of an intent to entirely revise and repeal the original ordinance." *Village of Park Forest v. Wojciechowski,* 29 Ill. 2d 435, 439 (1963). In *Wojciechowski,* the court distinguished a case similar to *Athey*, in which "the amendatory ordinance expressly reflected a legislative intent to completely revise and substitute for the entire prior zoning ordinance, thus manifesting an intent to entirely repeal the original ordinance." *Id.* (citing *DuPage Cnty. v. Molitor,* 26 Ill. App. 2d 232 (2d Dist. 1960)). In contrast, the 2018 Ordinances, however, lack any manifestation of express legislative intent to completely revise and substitute for O-13-24. The structure of the amendments in this case dictate an opposite conclusion. "[W]here an amendatory ordinance . . . re-enacts some of the provisions of the former ordinance, such portions of the old ordinance . . . *are to be regarded as a continuation of the old ordinance and not as the enactment of a new ordinance on the*

subject." *Wojciechowski,* 29 Ill. 2d at 438 (citations omitted) (emphasis added); *see also Nolan v. City of Granite City,* 162 Ill. App. 3d 187, 190 (5th Dist. 1987) (finding ordinances should be interpreted consistently with one another as coherent system of legislation, and those ordinances relating to same subject matter should be construed harmoniously where possible).[3] The 2018 Ordinances use the word "amendment" not only in the titles, but repeatedly throughout their text. Thus, even if we were to apply *Athey* to the Ordinances, as Appellants contended, this Court would still be unable to come to the conclusion that they are "new laws."

Deerfield enacted the 2013 Ordinance within the 10-day window provided in the FOID Act, and therefore preserved both its authority over assault weapons and the opportunity to amend these regulations as it deemed necessary. As Representative Drury stated, "the proper thing, the responsible thing to do, I think, is to put the Ordinance [regulating storage and transportation] in place so that you can then, or future Mayors and Trustees can then, decide and mold this Ordinance the way you want it to be." (C 1188-89) Deerfield clearly heeded the General Assembly's express statement that ordinances enacted consistent with Section 13.1(c) "may be amended," when it passed the 2018 Ordinances. The text of the Ordinances—their structure, terminology, and setting—leave room for no other conclusion.

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[3] GSL's citations to *City of Metropolis v. Gibbons*, 334 Ill. 431, 434-35 (1929) and *Culver v. Third Nat. Bank of Chicago*, 64 Ill. 528, 534 (1871) are in opposite as Deerfield's amendments clearly include express language making clear the modification of part, not all, of the ordinance is an amendment as intended by Deerfield. There is no ambiguity.

C. Although Deerfield's 2013 Ordinance Regulated Possession and Not Ownership of Assault Weapons, Deerfield's Authority to Ban Ownership Did Not Lapse.

As a third argument, Appellants contend that because Deerfield only regulated the possession of assault weapons in 2013, and rather than adopting an outright ban on the ownership or possession of these weapons as a threshold matter, Deerfield's 2018 Amended Ordinances did not actually amend the 2013 Ordinance but rather created new law. This argument, however, cannot withstand even casual scrutiny.

First, there is nothing unusual about an amendment proscribing activity that was previously lawful. The "amendment of an act always operates as a repeal of its provisions to the extent they are changed by, and rendered repugnant to, the amendatory act." *City of Metropolis v. Gibbons,* 334 Ill. 431, 437 (1929). This is evidenced by local governments amending zoning ordinances to ban billboards that were previously lawful. *Lamar Whiteco Outdoor Corp. v. City of West Chicago,* 355 Ill. App. 3d 352, 354-56 (2d Dist. 2005). Further, as touched on previously, the Seventh Circuit recently upheld another home rule unit's action in amending its firearms ordinance to ban assault weapons. *See Wilson,* 937 F.3d at 1029. The assault weapons ban upheld by the Seventh Circuit in *Wilson* was an amendment to a former Cook County ordinance that only regulated licensing and other practices of firearms dealers. *See* Cook County, Ill. Code §§ 54-92(a), 54-210. Like Deerfield's amendment, the Cook County amendment prohibited previously lawful activity. It also drastically expanded the scope of persons subject to the regulation, unlike Deerfield's ordinances. There is no support for Appellants' contention that because a legislative enactment is not an "amendment" if the amended ordinance contains substantial changes to a prior law.

Appellants' position here—that regulating previously lawful conduct is not an amendment—also ignores the express intention of the legislature, as discussed in detail above. When looking at the explicit language of the legislature, "[a]n ordinance enacted on, before or within 10 days after the effective date of the amendatory Act of the 98th General Assembly may be amended," it is clear that the General Assembly intended for home rule units, like Deerfield, to act quickly and amend later. Representative Scott Drury acknowledged as much when he stated at Deerfield's public Village Board meeting, that the FOID Act was a "use it or lose it" statute.

As acknowledged by Appellants, Deerfield need not address all parts of a particular issue "in one fell swoop." *People v. Adams*, 144 Ill. 2d 381, 391 (1991). Although Appellants are correct that the General Assembly restricted the concurrent home rule authority, it did not do so in a way that prevents Deerfield from enacting the 2018 Ordinances *amending* its timely 2013 Ordinance. Both *City of Chicago v. Roman*, 184 Ill. 2d 504 (1998) (finding the city acted within its home rule authority) and *Burns v. Mun. Officers Electoral Bd. of Vill. of Elk Grove Vill.*, 2020 IL 125714 (considering the General Assembly's intent in placing a limitation on home rule authority), cited to by Appellants, recognize concurrent authority and that home rule units are allowed to act within the bounds of the concurrent home rule authority as Deerfield has done here.

D. Large Capacity Magazines are a Category of Assault Weapons Addressed by the General Assembly under the 2013 Amendments to the FOID Act and the FCCA.

Finally, in a last-ditch effort, the Easterday Appellants contend that large capacity magazines are not a category of assault weapons and thus are beyond the ordinances permitted by the FOID Act and FCCA. In doing so, Easterday fails to acknowledge that the FCCA does not refer either directly or indirectly to large capacity magazines. This

argument also fails to acknowledge that national legislation and local ordinances restricting the use or possession of assault weapons have consistently included restrictions on large capacity magazines as part of the definition of assault weapons.

Limitations on large capacity magazines have been an important part of most assault weapons regulations for decades. For example, when Congress adopted its Federal Assault Weapons ban in 1994 as part of the "Violent Crime Control and Law Enforcement Act of 1994", Pub. L. 103-332, tit. XI, subtit. A § 110102(b), 103 and 104, it expressly included a ban large capacity magazines, defined as a "feeding device capable of accepting more than ten rounds of ammunition." This very same definition of assault weapon is mirrored in both the 2013 Deerfield Ordinance and the 2018 Amendments. Indeed, nearly all federal cases considering the constitutionality of assault weapons bans under the Second Amendment involve bans on assault weapons and large capacity magazines. *See* e.g. *Heller v. District of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011); *Friedman v. Highland Park*, 784 F.3d 406 (7th Cir. 2015).

Easterday's position here, though, is that the General Assembly somehow intended to provide blanket protection for large capacity magazines and to exclude them from the standard definition of assault weapons used by the United States Congress and a myriad of other states and municipalities. Easterday contends that this was some the intent of the General Assembly although there is no reference, discussion or debate supporting this argument. Instead, Easterday believes that a discussion on "ammunition" without reference to assault weapons or large capacity magazines was somehow intended to forbid any municipality from regulating or banning these highly dangerous components of a semi-automatic assault weapon.

The opposite is true. It is clear that large capacity magazines are part and parcel of assault weapons. And, unfortunately, they often serve a very specific purpose—allowing mass shooters to kill or injure dozens of victims without having to pause to reload. The shooter in Aurora, Colorado, was armed with a magazine capable of holding 100 rounds (C 1070-1075); the shooter in Tucson, Arizona used a magazine holding 30 rounds in the attack that seriously injured Congresswoman Giffords. (C 1056-1068) Given this terrifying history, the fact that the General Assembly is entirely silent on the issue of large capacity magazines counsels strongly in favor of treating these weapons as components of assault weapons, just as they have been historically treated, by both courts and legislatures. Moreover, the Second District's opinion, finding that this provision is only preempted to the extent it attempts to regulate handguns, is immaterial as the ordinance clearly seeks to regulate magazines used hand-in-hand with assault weapons and that have been considered part and parcel of assault weapons across the country. A-035. There is no basis for granting large capacity magazines a special statewide preemption different than including these magazines in the same concurrent jurisdiction that the General Assembly extended home rule jurisdictions allowing them to regulate assault weapons generally.

II. The Second District Properly Held That It Had Jurisdiction Over Deerfield's Appeal.

Appellants also challenge the Second District's decision by contending that the Appellate Court lacked jurisdiction over Deerfield's appeal. Appellants arrive at this argument in a novel way requiring this Court to reverse multiple lower court orders. First, they contend that the Circuit Court's July 27, 2018 consolidating the cases "for all future proceedings" did not merge the two cases. Next, Appellants contend that the

Circuit Court erred in its September 6, 2019 Order when it granted Deerfield's Motion for a Rule 304(a) finding and expressly held that the Court had always intended to merge the two cases into a single proceeding by its July 27, 2018 Order. Third, Appellants argue that this Court should ignore the Circuit Court's discussion of the limitations of Lake County's docketing system as well as the Circuit Court's explanation of why separate docket entries did not reflect the intent of the Court. Finally, the Appellants contend that the Second District erred when it confirmed the Circuit Court's order and held that jurisdiction on appeal was appropriate. The Second District, however, appropriately rejected Appellant's novel argument, stating:

> We determine that there is no basis to overturn the trial court's finding that the actions merged. . . . Having no basis to disturb the trial court's finding that the two actions merged [the] jurisdictional challenges fail as well. Specifically, because the actions merged, Deerfield did not miss its opportunity to appeal the March 22, 2019, final judgment in the Easterday action. Because Deerfield did not miss its opportunity to appeal the final judgement in the Easterday action, the appeal of the March 22, 2019, order entered in the Guns Save Life action is neither moot nor barred by collateral estoppel. The March 22, 2019, order in the Easterday action was rendered appealable on September 6, 2019, when the trial court made findings under Rule 304(a). The court's March 22, 2019, rulings on counts I and III of Guns Save Life's amended complaint likewise were rendered appealable on September 6, 2019 when the court made findings under Rule 304(a). Deerfield appealed within 30 days of September 6, 2019. Accordingly, we have jurisdiction of the appeal under rule 304(a).

A-010 - A-011.

Additionally, the Second District had jurisdiction over the appeal pursuant to Illinois Supreme Court Rule 304(a). "On September 6, 2019, the [circuit] court made Rule 304(a) findings as requested by Deerfield." A-008. In that order, "[t]he court also clarified that it had intended to merge the two actions when it entered the consolidation

order." *Id.* The Circuit Court also held that its July 27, 2018 Order had merged the Easterday and GSL cases. A-118 ("The Court's Order of July 27, 2018 consolidating these cases 'for all purposes' addressed both these cases which 'might have been brought as a single action.'"). Thus, as recognized by the Second District, both cases "might have been brought as a single action," meaning they "merged into one action, thereby losing their individual identity to be disposed of as a single suit." A-006.

As a threshold matter, Appellants have not preserved this matter for appeal to this Court. The Circuit Court's order affirming this ruling was intended to merge the cases and is final and binding on all parties. Appellants did not raise this issue on cross-appeal, and as such it is waived. *Ruff v. Indus. Comm'n of Illinois,* 149 Ill.App. 3d 73, 78-79 (1st Dist. 1986) ("If [an] appellee fails to file [a] cross-appeal, the reviewing court is confined to only those issues raised by the appellant and will not consider those urged by the appellee except where they are related to appellant's issues."); *DeKalb Bank v. Klotz,* 151 Ill. App. 3d 638, 643-44 (2d Dist. 1986) (finding waiver where appellee failed to raise issue on cross-appeal).

Appellants also have their facts wrong. Appellants rely heavily on the fact that each test case maintained its own docket entry. From there they contend that the cases could not have "merged" for purposes of Rule 304(a). But, as the Circuit Court made abundantly clear in its Order on consolidation, the fact that the two cases retained separate docket entries was merely a function of the limitations of the county's docketing system and did not reflect the intent of the court. The court's recordkeeping computer system is under CRIMS, which has limited capabilities. (R 284-85) CRIMS does not have the capabilities of taking a case that has been filed and merge it or put it together

under one case number if they have been consolidated. *Id*. When cases are consolidated, the caption contains both numbers and both files are updated. *Id*. "[T]he fact that two docket numbers exist is really more a function of a policy and procedure of the clerk's file more so than anything that this Court intended as far as two separate cases." *Id*.

Further evidencing the intent of the Circuit Court to merge the cases into a single action, the Circuit Court scheduled every hearing so that both cases would proceed together. The Court also issued a single opinion addressing all of the arguments raised by both Appellants. The only reason that the Court entered a two-page order in the Easterday case was, as the Court acknowledged, so that the system could track both cases.

Easterday continues to primarily rely on three cases to support their proposition that the Circuit Court's Order did not properly merge the two cases: *In re: Adoption of S.G.*, 401 Ill. App. 3d 775, 782 (4th Dist. 2010), *Nationwide Mut. Ins. Co. v. Filos*, 285 Ill. App. 3d 528, 530 (1st Dist. 1996), and *Kassnel v. Village of Rosemont,* 135 Ill. App. 3d 361, 364 (1st Dist. 1985). Importantly, these cases do not involve procedural or factual circumstances like those present here.

Unlike this lawsuit, none of these cases involved an express finding by the circuit court that the underlying cases had merged. Rather, the appellate courts were left to make this determination based on limited facts. Thus, the Second District and this Court both have the benefit of knowing the Circuit Court's express intent. Moreover, this matter affects the rights of all parties, unlike the cited to cases which found one party's right had not been implicated. Finally, common among all three of these cases relied on by Easterday is that each appeal involved separate cases asserting distinct legal claims, issues, and prayers for relief. Whether it was the competing parents seeking custody in

S.G., the separate liability and fraud actions in *Nationwide,* or the differing procedural actions in *Kassnel*, the appellate courts could identify a distinction in those cases that is simply not present here. Here, the Easterday and GSL Appellants presented identical test cases that were near-mirror images of one another, and each sought the same injunctive relief that, if granted to one set of Plaintiffs but not the other, would nonetheless vindicate the other's rights.

Easterday's reliance on *In re Marriage of Harnack & Fanady*, 2014 IL App (1st) 121424 and *Hall v. Hall*, 138 S. Ct. 1118, 1120 (2018) similarly fails. In neither of those cases did the court make the type of express findings that the Circuit Court did here. *Dowe v. Birmingham Steel Corp.*, 2011 IL App (1st) 091997, ¶ 22 is far more analogous. There, the appellate court found that the cases had been merged by virtue of the consolidation. Like the trial court in *Dowe*, here, the Circuit Court made the type of express finding that the cases had merged that were critical to supporting jurisdiction.

At their core, Appellants' jurisdictional arguments ask this Court not only to reverse the finding of the Circuit Court about its own intentions when it consolidated these cases, but to ignore these findings all together, and ignore the fact that they did not raise these issues in a cross-appeal. Because it was the express intent of the Circuit Court to merge the cases for all purposes, and because Appellants failed to file a cross appeal on this issue, it is clear that Deerfield's appeal of both matters was properly before the Second District, and the Second District's holdings should be affirmed.

CONCLUSION

Wherefore, for the foregoing reasons, Defendants-Appellees, the Village of Deerfield, and Mayor Harriet M. Rosenthal, solely in her official capacity, seek an Order

of this Court affirming the decision of the Second District and dissolving the permanent injunction barring the enforcement of Ordinances O-18-06 and O-18-19.

Respectfully submitted,

Dated: June 23, 2021

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CERTIFICATE OF COMPLIANCE

I certify that this brief confirms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters appended to the brief under Rule 342(a), is 34 pages.

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No. 126840

In the

Supreme Court of Illinois

GUNS SAVE LIFE, INC., *et al.*,

Plaintiffs-Appellants,

vs.

VILLAGE OF DEERFIELD, ILLINOIS, *et al.*,

Defendants-Appellees.

On Appeal from the Appellate Court of Illinois,
Second Judicial District, No. 2-19-0879,
There heard on appeal from the Circuit Court of
Lake County, Illinois, No. 18 CH 427
The Honorable Luis A. Berrones, Judge Presiding.

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2020 IL App (2d) 190879
No. 2-19-0879
Opinion filed December 7, 2020

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

DANIEL D. EASTERDAY, ILLINOIS STATE RIFLE ASSOCIATION, and SECOND AMENDMENT FOUNDATION, INC.,	)	Appeal from the Circuit Court of Lake County.
Plaintiffs-Appellees,	)	
v.	)	No. 18-CH-427
THE VILLAGE OF DEERFIELD,	)	Honorable Luis A. Berrones,
Defendant-Appellant.	)	Judge, Presiding.

GUNS SAVE LIFE, INC., and JOHN WILLIAM WOMBACHER III,	)	Appeal from the Circuit Court of Lake County.
Plaintiffs-Appellees,	)	
v.	)	No. 18-CH-498
THE VILLAGE OF DEERFIELD and HARRIET ROSENTHAL, in Her Official Capacity as Mayor of the Village of Deerfield,	)	Honorable Luis A. Berrones,
Defendants-Appellants.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court, with opinion.
Justice Hudson concurred in the judgment and opinion.
Justice McLaren concurred in part and dissented in part, with opinion.

OPINION

2020 IL App (2d) 190879

¶ 1 The plaintiffs in these consolidated actions challenge the Village of Deerfield's bans of "assault weapons" and "large capacity magazines." One set of plaintiffs—Daniel D. Easterday, the Illinois State Rifle Association, and the Second Amendment Foundation, Inc. (collectively, Easterday)—sued Deerfield. The other set of plaintiffs—Guns Save Life, Inc. and John William Wombacher III (collectively, Guns Save Life)—sued both Deerfield and its mayor, Harriet Rosenthal. For the sake of simplicity, we will refer to both defendants collectively as Deerfield. The trial court granted summary judgment in favor of plaintiffs and permanently enjoined Deerfield from enforcing its bans of assault weapons and large capacity magazines. Deerfield appeals. For the following reasons, we affirm in part and reverse in part the trial court's orders granting summary judgment in favor of plaintiffs. We vacate the permanent injunctions in part and remand the cause for further proceedings consistent with this opinion.

¶ 2 I. BACKGROUND

¶ 3 Deerfield is a home rule unit. Before 2013, it did not have an ordinance in place regulating assault weapons or large capacity magazines.

¶ 4 Effective July 9, 2013, the Illinois legislature enacted the Firearm Concealed Carry Act (Concealed Carry Act) (430 ILCS 66/1 *et seq.* (West 2018)) and amended section 13.1 of the Firearm Owners Identification Card Act (FOID Card Act) (430 ILCS 65/13.1 (West 2018)). Deerfield interpreted this legislation as providing a brief window for home rule units to regulate assault weapons. Deerfield understood that if it failed to regulate such weapons by July 20, 2013, it would forever lose its power to do so. Although Deerfield was not ready to impose a total ban on assault weapons, it did not want to lose its regulatory authority on this matter. Deerfield believed that if it timely regulated assault weapons, it could amend those regulations at any time and in any manner it wished.

¶ 5 Consistent with its interpretation of the relevant legislation, on July 1, 2013, Deerfield enacted ordinance No. O-13-24 (the 2013 ordinance), which regulated the storage and transportation of assault weapons within the village. Deerfield defined "assault weapon" by reference to a list of both physical characteristics of firearms and specified models. See Deerfield Municipal Code § 15-86 (added July 1, 2013). Deerfield defined "large capacity magazine" as

> "any ammunition feeding device with the capacity to accept more than ten rounds, but shall not be construed to include the following:
>
> (1) A feeding device that has been permanently altered so that it cannot accommodate more than ten rounds.
>
> (2) A 22 caliber tube ammunition feeding device.
>
> (3) A tubular magazine that is contained in a lever-action firearm." Deerfield Municipal Code § 15-86 (added July 1, 2013).

Deerfield specified certain requirements for the safe storage and transportation of assault weapons. See Deerfield Municipal Code §§ 15-87, 15-88 (added July 1, 2013). Failure to comply with those requirements would result in a fine between $250 and $1000. Deerfield Municipal Code § 15-89 (added July 1, 2013).

¶ 6 In 2018, following numerous highly publicized mass shootings across the country, Deerfield decided to enact what amounted to a total civilian ban on assault weapons and large capacity magazines. This was accomplished through two ordinances: Deerfield Ordinance No. O- 18-06 (eff. Apr. 2, 2018) and Deerfield Ordinance No. O-18-19 (eff. June 18, 2018)(collectively,

the 2018 ordinances).[1] The 2018 ordinances amended the sections of the municipal code that were added by the 2013 ordinance. Changes to the text of the municipal code were reflected by striking out language that was to be removed and underlining language to be added. Specifically, Deerfield made it unlawful for persons other than military or law enforcement personnel to "possess, bear, manufacture, sell, transfer, transport, store or keep any assault weapon or large capacity magazine in the Village." Deerfield Municipal Code § 15-87(a) (amended June 18, 2018). Deerfield provided a 60-day grace period for persons in possession of assault weapons or large capacity magazines to either (1) remove, sell, or transfer those items from the limits of the village, (2) render the items permanently inoperable or otherwise modify them so that they no longer fell within the definitions of prohibited items, or (3) surrender the items to the chief of police for disposal and destruction. Deerfield Municipal Code §§ 15-90, 15-91 (added Apr. 2, 2018).

¶ 7 Easterday and Guns Save Life filed separate lawsuits challenging the validity of the 2018 ordinances.[2] The Easterday action was designated in the trial court as case No. 18-CH-427 and the Guns Save Life action was designated as No. 18-CH-498. The trial court entered temporary restraining orders in both cases prohibiting Deerfield from enforcing the bans. On July 27, 2018, the court consolidated the two actions "for all future proceedings."

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[1] Early in this litigation, the trial court determined that, contrary to what Deerfield claimed, ordinance No. O-18-06 did not ban large capacity magazines. In response to that ruling, Deerfield enacted ordinance No. O-18-19, which explicitly banned large capacity magazines.

[2] In their original complaints, Easterday and Guns Save Life challenged ordinance No. O-18-06. When Deerfield subsequently enacted ordinance No. O-18-19, Easterday and Guns Save Life amended their complaints to challenge that ordinance as well. In its amended complaint, Easterday misidentified ordinance No. O-18-19 as ordinance No. O-18-24-3.

¶ 8 In their respective amended complaints, Easterday and Guns Save Life alleged that the bans imposed by the 2018 ordinances were preempted by section 13.1 of the FOID Card Act (430 ILCS 65/13.1 (West 2018)) and section 90 of the Concealed Carry Act (430 ILCS 66/90 (West 2018)). Easterday advanced this theory in a single count, whereas Guns Save Life advanced this theory in two counts (counts I and III of its amended complaint). Guns Save Life further alleged that the ordinances (1) were preempted by section 2.1 of the Wildlife Code (520 ILCS 5/2.1 (West 2018)) (counts II and IV of Guns Save Life's amended complaint) and (2) amounted to improper "takings" in violation of the Illinois Constitution (Ill. Const. 1970, art. I, § 15) (count V) and the Eminent Domain Act (735 ILCS 30/90-5-20 (West 2018)) (count VI).

¶ 9 On March 22, 2019, in response to Easterday's and Guns Save Life's motions for summary judgment, the trial court entered permanent injunctions in both cases enjoining Deerfield from "enforcing any provision of [the 2018 ordinances] making it unlawful to keep, possess, bear, manufacture, sell, transfer or transport assault weapons or large capacity magazines as defined in these ordinances." The court determined that the bans imposed by the 2018 ordinances were preempted by section 13.1 of the FOID Card Act and section 90 of the Concealed Carry Act. The court found, however, that genuine issues of material fact precluded summary judgment on Guns Save Life's claims that the bans amounted to improper "takings." The court also rejected Guns Save Life's argument that the bans were preempted by the Wildlife Code. The effect of these orders was to (1) grant summary judgment to Easterday as to the only claim that was at issue in its amended complaint, (2) grant summary judgment to Guns Save Life as to counts I and III of its amended complaint, and (3) deny Guns Save Life's motion for summary judgment as to counts II, IV, V, and VI of its amended complaint. Neither of the court's orders entered on March 22, 2019,

included language rendering the matters immediately appealable pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016).

¶ 10 Deerfield attempted to appeal the permanent injunctions pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017). On June 12, 2019, we dismissed that appeal for lack of jurisdiction, because (1) Rule 307(a)(1) does not apply to permanent injunctions, (2) no final judgment was entered with respect to Guns Save Life's amended complaint, as the trial court did not resolve all claims, and (3) due to the lack of a complete record, we could not determine whether a final and independently appealable judgment had been entered with respect to Easterday's amended complaint. See *Easterday v. Village of Deerfield*, 2019 IL App (2d) 190320-U, ¶ 43 (*Easterday I*).

¶ 11 On that last point, we explained:

> " 'Illinois courts have recognized three distinct forms of consolidation: (1) where several actions are pending involving the same subject matter, the court may stay proceedings in all but one of the cases and determine whether the disposition of one action may settle the others; (2) where several actions involve an inquiry into the same event in its general aspects, the actions may be tied together, but with separate docket entries, verdicts and judgment, the consolidation being limited to a joint trial; and (3) where several actions are pending which might have been brought as a single action, the cases may be merged into one action, thereby losing their individual identity, to be disposed of as one suit.' " *Easterday I*, 2019 IL App (2d) 190320-U, ¶ 40 (quoting *Busch v. Mison*, 385 Ill. App. 3d 620, 624 (2008)).

Because the trial court did not stay any proceedings, we ruled out the first form of consolidation. *Easterday I*, 2019 IL App (2d) 190320-U, ¶ 40.

¶ 12 We noted that the difference between the second and third forms of consolidation had jurisdictional implications:

> "Where the second form of consolidation applies, a final judgment entered in one of the actions is immediately appealable without a Rule 304(a) finding. [Citation.] In fact, the aggrieved party *must* immediately appeal the final order in that first action, as opposed to waiting until the companion action is resolved. [Citations.] Where, however, the third form of consolidation applies and the two actions merge into one, unless the trial court makes a Rule 304(a) finding, the aggrieved party may not appeal until all claims have been adjudicated. [Citations.] In considering which form of consolidation applies in a given case, reviewing courts have looked to the reasons for consolidation proposed by the litigants in their motions for consolidation. [Citations.] Other relevant considerations may include the wording of the consolidation order [citation], whether the cases maintained separate docket entries after consolidation, and whether the litigants were treated as parties in both cases." (Emphasis in original.) *Easterday I*, 2019 IL App (2d) 190320-U, ¶ 41.

¶ 13 Given that Deerfield erroneously pursued its appeal under Rule 307(a)—which contemplates a more limited supporting record as compared to appeals from final judgments—we were unable "to determine which form of consolidation the trial court intended." *Easterday I*, 2019 IL App (2d) 190320-U, ¶ 40. We concluded:

> "Irrespective of whether the two actions merged, Deerfield's *** appeal of the permanent injunction that was entered in the Guns Save Life action is premature. If the two actions merged, Deerfield *** may not appeal until the resolution of all claims in both actions (or until the trial court enters a Rule 304(a) finding as to the permanent injunction in the Guns Save Life action). If the two actions did not merge, Deerfield *** may not

> appeal until the resolution of all claims in the Guns Save Life action (or until the trial court enters a Rule 304(a) finding as to the permanent injunction in the Guns Save Life action). ***.
>
> With respect to Deerfield's appeal of the permanent injunction that was entered in the Easterday action, however, the appeal is premature only if the two actions merged. If the two actions merged, Deerfield may not appeal until the resolution of all claims in both actions (or until the trial court enters a Rule 304(a) finding as to the permanent injunction in the Easterday action). (If the two actions did not merge, Deerfield's failure to establish that fact in the present appeal is fatal to any appeal in the Easterday action.)" *Easterday I*, 2019 IL App (2d) 190320-U, ¶¶ 44-45.

¶ 14 Following our decision in *Easterday I*, Deerfield filed a motion in the trial court requesting Rule 304(a) findings with respect to the March 22, 2019, orders entered in both the Easterday action and the Guns Save Life action. As noted above, on March 22, 2019, the court had resolved the only claim that was at issue in the Easterday action. Concerning the Guns Save Life action, Deerfield requested Rule 304(a) findings as to the court's rulings only on counts I through IV of the amended complaint (the preemption claims, not the takings claims). Deerfield also asked the court to find that the July 27, 2018, consolidation order merged the two cases. In their responses to Deerfield's motion, both Easterday and Guns Save Life argued that the consolidation order had not merged the actions.

¶ 15 On September 6, 2019, the court made Rule 304(a) findings as requested by Deerfield. The court also clarified that it had intended to merge the two actions when it entered the consolidation order. In explaining its decision, the court mentioned that certain limitations in the court clerk's case management system prevented multiple cases from being merged into one case number.

¶ 16 On October 3, 2019, Deerfield filed a notice of appeal, specifying its intent to challenge the permanent injunctions that the court entered on March 22, 2019, which were rendered appealable by the September 6, 2019, order.

¶ 17 II. ANALYSIS

¶ 18 A. Jurisdiction

¶ 19 Easterday and Guns Save Life both contend that we lack jurisdiction.

¶ 20 Easterday argues as follows. There are numerous objective indications from the record that suggest that the trial court's July 27, 2018, consolidation order was for judicial convenience and economy, not to merge the cases. Because Deerfield failed to appeal the final order entered in the Easterday action within 30 days of March 22, 2019, we lack jurisdiction of the present appeal.[3]

¶ 21 Guns Save Life presents a very similar jurisdictional argument. Guns Save Life emphasizes the unfairness of the trial court's after-the-fact explanation about its intent to merge the actions. Like Easterday, Guns Save Life argues that the cases did not merge and Deerfield, therefore, failed to timely appeal the final judgment in the Easterday action. According to Guns Save Life, because its action involves a permanent injunction that is identical to the one that was entered in the Easterday action, any appeal of the Guns Save Life action is moot and barred by collateral estoppel.

¶ 22 Deerfield maintains that we have jurisdiction under Rule 304(a). According to Deerfield, Easterday and Guns Save Life did not file cross-appeals, so they may not challenge the trial court's

[3] Deerfield *did* file a notice of appeal within 30 days of the March 22, 2019, orders. As explained above, we dismissed Deerfield's first appeal for lack of jurisdiction. Thus, it appears that Easterday's argument is that we lack jurisdiction of the present appeal because we had jurisdiction in the prior appeal of a final judgment in the Easterday action, and Deerfield failed to establish that fact at the time.

finding that the actions merged. Deerfield further notes that the trial court expressly stated that it intended to merge the actions. Deerfield argues that this distinguishes the matter from the various cases cited by Easterday and Guns Save Life, where the appellate court was tasked with ascertaining trial judges' intent from the circumstantial evidence in the record.

¶ 23 In our view, contrary to Deerfield's suggestions, Easterday and Guns Save Life did not need to file cross-appeals to raise this issue. It would have been inappropriate for them to file cross-appeals because they obtained by summary judgment all the relief that they requested: a declaratory judgment in their favor as to the invalidity of the bans imposed by the 2018 ordinances and a permanent injunction barring Deerfield from enforcing those bans. See *Material Service Corp. v. Department of Revenue*, 98 Ill. 2d 382, 387 (1983) (an appellee may challenge specific findings made by the trial court without filing a cross-appeal, so long as "the judgment of the trial court was not at least in part against the appellee"); *Chicago Tribune v. College of Du Page*, 2017 IL App (2d) 160274, ¶ 28 (although it was improper for the appellee to file a cross-appeal from an order granting summary judgment in its favor, we noted that we could consider the appellee's contention that portions of the trial court's reasoning were erroneous, because an appellee may defend the judgment on any basis appearing in the record). Moreover, the issue that Easterday and Guns Save Life raise implicates our jurisdiction, so it is not subject to waiver or forfeiture. See *Ruff v. Industrial Comm'n*, 149 Ill. App. 3d 73, 78 (1986) (even without filing a cross-appeal, the employer-appellee was permitted to argue that the appellant did not file a timely petition before the Industrial Commission, as that argument raised questions regarding the jurisdiction of both the Industrial Commission and the appellate court).

¶ 24 We determine that there is no basis to overturn the trial court's finding that the actions merged. This case is unusual. In the more typical case, the appellate court must ascertain the trial

court's intent by looking at circumstantial factors in the record, such as the ones that we outlined in *Easterday I.* Here, however, there is no room to argue about the trial court's intent because the court expressly stated that it intended to merge the actions. We recognize that the court clarified its intent only after the jurisdictional implications became apparent to both the court and the parties. We also recognize that the court mentioned certain limitations in Lake County's case management system that the parties may have had no reason to know about when the consolidation order was entered. Nevertheless, we find no prejudice to any party. Guns Save Life poses a hypothetical scenario in which a trial judge leads the parties to believe that two matters merged, only to later explain, once it was too late for the losing party to appeal, that the matters did not merge. Here, however, there is no unfairness, as the litigants are being granted access to the appellate court rather than foreclosed from such access.

¶ 25 Having no basis to disturb the trial court's finding that the two actions merged, Easterday's and Guns Save Life's jurisdictional challenges fail. Specifically, because the actions merged, Deerfield did not miss its opportunity to appeal the March 22, 2019, final judgment in the Easterday action. Because Deerfield did not miss its opportunity to appeal the final judgment in the Easterday action, the appeal of the March 22, 2019, order entered in the Guns Save Life action is neither moot nor barred by collateral estoppel. The March 22, 2019, order in the Easterday action was rendered appealable on September 6, 2019, when the trial court made findings under Rule 304(a). The court's March 22, 2019, rulings on counts I and III of Guns Save Life's amended complaint likewise were rendered appealable on September 6, 2019, when the court made findings

under Rule 304(a).[4] Deerfield appealed within 30 days of September 6, 2019. Accordingly, we have jurisdiction of the appeal under Rule 304(a).

¶ 26 B. Preemption

¶ 27 The trial court granted summary judgment in favor of Easterday and Guns Save Life, determining that the bans imposed by the 2018 ordinances were preempted by section 13.1 of the FOID Card Act and section 90 of the Concealed Carry Act. Summary judgment is appropriate where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2018). We review *de novo* the trial court's decision. *Guns Save Life, Inc. v. Ali*, 2020 IL App (1st) 181846, ¶ 43.

¶ 28 When interpreting a statute, our goal is to ascertain and effectuate the legislature's intent. *Iwan Ries & Co. v. City of Chicago*, 2019 IL 124469, ¶ 19. The plain and ordinary meaning of the statutory language is the most reliable indicator of that intent. *Iwan Ries*, 2019 IL 124469, ¶ 19. We must consider the statute as a whole, construing words and phrases in their proper context rather than in isolation. *Iwan Ries*, 2019 IL 124469, ¶ 19. We may consider both the subject of the statute and the legislature's apparent purpose in enacting it. *Iwan Ries*, 2019 IL 124469, ¶ 19. If it is possible to do so, we should embrace an interpretation that gives a reasonable meaning to each word, clause, and sentence of the statute without rendering any language superfluous. *Murphy-Hylton v. Lieberman Management Services, Inc.*, 2016 IL 120394, ¶ 25. Where the statute's language is clear and unambiguous, we apply it as written without resorting to extrinsic aids of construction. *Skaperdas v. Country Casualty Insurance Co.*, 2015 IL 117021, ¶ 16.

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[4] As explained below in section II.B.7., the court's Rule 304(a) findings did not render appealable the nonfinal orders as to counts II and IV of Guns Save Life's amended complaint.

¶ 29 1. *Nature of Home Rule Authority*

¶ 30 Before turning to the statutes at issue, we will provide some background about the nature of home rule authority, as it will inform our analysis. "Under the 1870 Illinois Constitution, the balance of power between our state and local governments was heavily weighted toward the state." *City of Chicago v. Stubhub, Inc.*, 2011 IL 111127, ¶ 18. With the adoption of the current Constitution in 1970, that balance of power was drastically altered, such that local governments "now enjoy 'the broadest powers possible.' " *Stubhub*, 2011 IL 111127, ¶ 18 (quoting *Scadron v. City of Des Plaines*, 153 Ill. 2d 164, 174 (1992)). The impetus for this power transfer was "the assumption that municipalities should be allowed to address their problems by tailoring solutions to local needs." *Iwan Ries*, 2019 IL 124469, ¶ 21. To that end, article 7, section 6(a) of the Illinois Constitution provides, in relevant portion:

> "Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt." Ill. Const. 1970, art. VII, § 6(a).

The Constitution indicates that the "[p]owers and functions of home rule units shall be construed liberally." Ill. Const. 1970, art. VII, § 6(m).

¶ 31 Nevertheless, the legislature retains the authority to restrict the powers of home rule units. Article 7, section 6(h), for example, allows the legislature to "provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit."[5] Ill. Const. 1970, art. VII, § 6(h). Article 7, section 6(i) establishes that home rule units may exercise their powers

[5] This rule is subject to certain exceptions relating to taxing powers. Those exceptions are not relevant to this appeal.

concurrently with the State, to the extent that the legislature "does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive." Ill. Const. 1970, art. VII, § 6(i). Thus, the legislature must expressly limit or deny home rule authority whenever it intends to do so. *Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 2013 IL 110505, ¶ 31; see also 5 ILCS 70/7 (West 2018) ("No law enacted after January 12, 1977, denies or limits any power or function of a home rule unit *** unless there is specific language limiting or denying the power or function and the language specifically sets forth in what manner and to what extent it is a limitation on or denial of the power or function of a home rule unit."). "In other words, the default position for a home rule unit is to be able to legislate local matters," and "the legislature's silence on the power of home rule units is actually evidence of the home rule unit's power." *Accel Entertainment Gaming, LLC v. Village of Elmwood Park*, 2015 IL App (1st) 143822, ¶ 47.

¶ 32 2. *The Governing Statutes*

¶ 33 As mentioned above, the Concealed Carry Act went into effect on July 9, 2013. Section 90 of that Act provides:

> "The regulation, licensing, possession, registration, and transportation of handguns and ammunition for handguns by licensees are exclusive powers and functions of the State. Any ordinance or regulation, or portion thereof, enacted on or before the effective date of this Act that purports to impose regulations or restrictions on licensees or handguns and ammunition for handguns in a manner inconsistent with this Act shall be invalid in its application to licensees under this Act on the effective date of this Act. This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution." 430 ILCS 66/90 (West 2018).

"Handgun" is defined as

> "any device which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas, or escape of gas that is designed to be held and fired by the use of a single hand. 'Handgun' does not include:
>
> (1) a stun gun or taser;
>
> (2) a machine gun as defined in item (i) of paragraph (7) of subsection (a) of Section 24-1 of the Criminal Code of 2012;
>
> (3) a short-barreled rifle or shotgun as defined in item (ii) of paragraph (7) of subsection (a) of Section 24-1 of the Criminal Code of 2012; or
>
> (4) any pneumatic gun, spring gun, paint ball gun, or B-B gun which expels a single globular projectile not exceeding .18 inch in diameter, or which has a maximum muzzle velocity of less than 700 feet per second, or which expels breakable paint balls containing washable marking colors." 430 ILCS 66/5 (West 2018).

¶ 34 Effective July 9, 2013, the legislature also amended section 13.1 of the FOID Card Act. That provision now reads as follows:

> "(a) Except as otherwise provided in the Firearm Concealed Carry Act and subsections (b) and (c) of this Section, the provisions of any ordinance enacted by any municipality which requires registration or imposes greater restrictions or limitations on the acquisition, possession and transfer of firearms than are imposed by this Act, are not invalidated or affected by this Act.
>
> (b) Notwithstanding subsection (a) of this Section, the regulation, licensing, possession, and registration of handguns and ammunition for a handgun, and the transportation of any firearm and ammunition by a holder of a valid Firearm Owner's

Identification Card issued by the Department of State Police under this Act are exclusive powers and functions of this State. Any ordinance or regulation, or portion of that ordinance or regulation, enacted on or before the effective date of this amendatory Act of the 98th General Assembly that purports to impose regulations or restrictions on a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act in a manner that is inconsistent with this Act, on the effective date of this amendatory Act of the 98th General Assembly, shall be invalid in its application to a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act.

(c) Notwithstanding subsection (a) of this Section, the regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State. Any ordinance or regulation, or portion of that ordinance or regulation, that purports to regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act, shall be invalid unless the ordinance or regulation is enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly. Any ordinance or regulation described in this subsection (c) enacted more than 10 days after the effective date of this amendatory Act of the 98th General Assembly is invalid. An ordinance enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly may be amended. The enactment or amendment of ordinances under this subsection (c) are subject to the submission requirements of Section 13.3. For the purposes of this subsection, 'assault weapons' means firearms designated by either make or model or by a test or list of cosmetic features that cumulatively would place the firearm into a definition of 'assault weapon' under the ordinance.

(d) For the purposes of this Section, 'handgun' has the meaning ascribed to it in Section 5 of the Firearm Concealed Carry Act.

(e) This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution." 430 ILCS 65/13.1 (West 2018).

¶ 35 This appeal presents four questions with respect to Deerfield's bans of assault weapons and large capacity magazines: (1) does section 13.1 of the FOID Card Act preempt all regulation of assault weapons by home rule units; (2) if not, was Deerfield's 2013 ordinance "inconsistent with" the FOID Card Act, within the meaning of section 13.1(c) of that Act; (3) if Deerfield's 2013 ordinance was inconsistent with the FOID Card Act, were Deerfield's 2018 ordinances mere amendments to the 2013 ordinance, as allowed by section 13.1(c); and (4) to the extent that Deerfield's ban of large capacity magazines regulates ammunition for handguns, is such a ban preempted by section 13.1(b) of the FOID Card Act and section 90 of the Concealed Carry Act?

¶ 36 3. *Section 13.1 of the FOID Card Act Does Not Preempt All Regulation of Assault Weapons by Home Rule Units*

¶ 37 The trial court determined that section 13.1 of the FOID Card Act preempts all regulation by home rule units relating to the possession or ownership of assault weapons. Easterday and Guns Save Life defend the court's conclusion on this point. In doing so, they focus heavily on the language of section 13.1(e) ("This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution." (430 ILCS 65/13.1(e) (West 2018)), along with the first sentence of section 13.1(c) ("[T]he regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State." (430 ILCS 65/13.1(c) (West 2018)).

¶ 38 Deerfield, on the other hand, argues that the interpretation espoused by Easterday, Guns Save Life, and the trial court fails to give effect to the following language in section 13.1(c):

> "Any ordinance or regulation, or portion of that ordinance or regulation, that purports to regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act, shall be invalid *unless the ordinance or regulation is enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly*. Any ordinance or regulation described in this subsection (c) enacted more than 10 days after the effective date of this amendatory Act of the 98th General Assembly is invalid." (Emphasis added.) 430 ILCS 65/13.1(c) (West 2018).

Taking this language into account, Deerfield maintains that the legislature adopted a "unique, hybrid form of concurrent jurisdiction over assault weapons." According to Deerfield, home rule units that regulated assault weapons within the window specified in section 13.1(c) retain their concurrent regulatory power; home rule units that failed to regulate assault weapons within this window, on the other hand, are prohibited from regulating on this subject.

¶ 39 Deerfield's interpretation of the statute prevails. As noted above, if it is possible to do so, we should embrace an interpretation that gives a reasonable meaning to each word, clause, and sentence of the statute without rendering any language superfluous. *Murphy-Hylton*, 2016 IL 120394, ¶ 25. Contrary to what the trial court concluded, we believe that it is possible to give effect to all of the language of section 13.1.

¶ 40 To be sure, section 13.1(e) and the first sentence of section 13.1(c) contain language that, if isolated from the rest of the statute, would generally be interpreted as preempting all local regulation of assault weapons. See *City of Chicago v. Roman*, 184 Ill. 2d 504, 517-18 (1998) (collecting examples of statutes where the legislature evinced its intent to preempt all regulation

by home rule units on various topics). Nevertheless, we must consider the statute as a whole, construing words and phrases in their proper context rather than in isolation. *Iwan Ries*, 2019 IL 124469, ¶ 19. Immediately after declaring that "the regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State," the statute carves out an exception for ordinances and regulations that were enacted on, before, or within 10 days of the statute's effective date. 430 ILCS 65/13.1(c) (West 2018). The statute adds that such ordinances may be amended outside the 10-day window. 430 ILCS 65/13.1(c) (West 2018).

¶ 41 Construing these provisions together, it is apparent that the legislature did not intend to preempt all regulation of assault weapons by home rule units. Instead, as Deerfield suggests, the legislature contemplated a hybrid balance of regulatory power between the State and local governments, whereby certain home rule units would have the authority to concurrently regulate assault weapons and others would not. In other words, the legislature intended that home rule units would be precluded from regulating assault weapons unless they took steps, within the prescribed timeframe, to regulate the possession or ownership of assault weapons in a manner that is inconsistent with the FOID Card Act.

¶ 42 For these reasons, we hold that the trial court erred in determining that section 13.1 of the FOID Card Act preempts all regulation of assault weapons by home rule units.

¶ 43 4. *Deerfield's 2013 Ordinance Was "Inconsistent With" the FOID Card Act*

¶ 44 The next issue is whether Deerfield retained its authority to regulate assault weapons concurrently with the State. There is no dispute that Deerfield enacted its 2013 ordinance within the window specified in section 13.1(c) of the FOID Card Act. The parties disagree, however, as to whether Deerfield's 2013 ordinance was "inconsistent with" the FOID Card Act. See 430 ILCS 65/13.1(c) (West 2018) ("[a]ny ordinance *** that purports to regulate the possession or ownership

of assault weapons in a manner that is inconsistent with this Act[ ] shall be invalid" unless it is enacted within the specified window).

¶ 45 In the alternative to its conclusion that section 13.1 of the FOID Card Act categorically preempts local regulation of assault weapons, the trial court determined that, because Deerfield's 2013 ordinance merely regulated the transportation and storage of assault weapons, it was not inconsistent with the FOID Card Act. In the court's view, section 13.1(c) of the FOID Card Act "provided home rule units a one-time 10-day window from the date of this section's effective date to ban ownership or possession of assault weapons." The court reasoned that, because Deerfield failed to enact such a ban within this window, it "lost its opportunity to do so and cannot later amend its ordinance to impose such a ban."

¶ 46 On appeal, both Easterday and Guns Save Life defend the trial court's interpretation. Deerfield addresses this issue in a single footnote of its appellant's brief. Guns Save Life asks us to ignore Deerfield's argument because substantive material should not appear in footnotes. See *Lundy v. Farmers Group, Inc.*, 322 Ill. App. 3d 214, 218 (2001) (striking footnotes from a brief that used footnotes (1) excessively, (2) to convey substantive arguments, and (3) to circumvent page limits). Although Deerfield should not have included substantive material in a footnote, we decline to strike the subject footnote or otherwise ignore Deerfield's argument. Deerfield did not use footnotes excessively in its brief, nor did it use footnotes to circumvent page limits. Additionally, this appeal might have legal implications for other home rule units that enacted regulations within the 10-day window short of assault-weapon bans, which is another reason not to ignore Deerfield's argument.

¶ 47 Deerfield argues as follows:

> "The term 'inconsistent with' refers to actions by a home-rule unit inconsistent with the State's exclusive jurisdiction absent action by a home-rule unit. The [FOID Card Act] merely asserted that the State now had exclusive jurisdiction. It did not impose any regulation beyond that. There was, despite the Circuit Court's assertion, no legislative or regulatory scheme with which to conflict. The only 'inconsistency' to which the provision refers would be the assertion of home-rule authority itself."

For the following reasons, we conclude that, although Deerfield comes closer to the proper interpretation, neither the parties nor the trial court accurately identified what the legislature intended when it allowed for local regulations of assault weapons that are "inconsistent with" the FOID Card Act.

¶ 48 The primary concern of the FOID Card Act is to regulate who may acquire or possess firearms, not which firearms those individuals may acquire or possess. See 430 ILCS 65/1 (West 2018). The Act defines "firearm" broadly, without excluding assault weapons. See 430 ILCS 65/1.1 (West 2018). Indeed, the only mention of assault weapons in the Act is in section 13.1(c). The Act's general rule, which is subject to numerous exceptions, is that no person who lacks a FOID card may acquire or possess within the State any firearm ammunition or any firearm, stun gun, or taser. 430 ILCS 65/2(a) (West 2018). Therefore, contrary to what Deerfield suggests, the FOID Card Act does regulate assault weapons, insofar as it requires anyone who acquires or possesses such firearms to have a FOID card.

¶ 49 To ascertain what the legislature intended in section 13.1(c) of the FOID Card Act when it created a window for home rule units to "regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act," we must read section 13.1(c) within the context of the entire section. Section 13.1(a) sets forth the general rule that the Act is not intended to

invalidate local regulations that require registration or impose "greater restrictions or limitations on the acquisition, possession and transfer of firearms than are imposed by this Act." 430 ILCS 65/13.1(a) (West 2018). Section 13.1(c) is designated as an exception to the rule outlined in section 13.1(a). The first sentence of section 13.1(c) provides: "Notwithstanding subsection (a) of this Section, the regulation of the possession or ownership of assault weapons are exclusive matters and functions of this State." 430 ILCS 65/13.1(c) (West 2018). The next sentence of section 13.1(c) creates an exception to the first sentence:

> "Any ordinance or regulation, or portion of that ordinance or regulation, that purports to regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act, shall be invalid unless the ordinance or regulation is enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly." 430 ILCS 65/13.1(c) (West 2018).

Accordingly, when the legislature used the phrase "inconsistent with this Act" in section 13.1(c), it was in the context of providing an exception to an exception to the general rule that ordinances are not invalid merely because they require registration or impose greater restrictions on the acquisition, possession, or transfer of firearms than those which are imposed by the Act. Thus, a home rule unit's regulation is "inconsistent with" the Act where such regulation imposes greater restrictions on assault weapons than the Act imposes. Any regulation of assault weapons beyond the mere requirement to possess a FOID card is inconsistent with the Act.

¶ 50 With this understanding, we hold that Deerfield's 2013 ordinance was inconsistent with the FOID Card Act because it regulated the possession and ownership of assault weapons beyond what was required by the Act. Specifically, the 2013 ordinance provided:

> "It shall be unlawful to store or keep any assault weapon in the Village unless such weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user. For purposes of this section, such weapon shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user." Deerfield Municipal Code § 15-87(a) (added July 1, 2013).[6]

Additionally, the 2013 ordinance stated:

> "It is unlawful and a violation of this section for any person to carry or possess an assault weapon in the Village, except when on his land or in his own abode, legal dwelling or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, except that this section does not apply to or affect transportation of assault weapons that meet one of the following conditions:
>
> (i) are broken down in a non-functioning state; or
>
> (ii) are not immediately accessible; or

[6] This rule was subject to a self-defense exception: "No person shall be punished for a violation of this section if an assault weapon is used in a lawful act of self-defense or in defense of another." Deerfield Municipal Code § 15-87(b) (added July 1, 2013).

> (iii) are unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card." Deerfield Municipal Code § 15-88(a) (added July 1, 2013).[7]

Having regulated the possession and ownership of assault weapons in a manner that was inconsistent with the FOID Card Act, Deerfield preserved its power to regulate assault weapons concurrently with the State.

¶ 51 The dissent disagrees with the majority's conclusion that Deerfield regulated both possession and ownership of assault weapons in its 2013 ordinance. In the dissent's view, Deerfield timely regulated only the possession of assault weapons, so it lacked authority under section 13.1(c) of the FOID Card Act to amend its ordinance in 2018 to regulate the ownership of assault weapons. We note that neither the trial court nor the parties embraced this rationale. One need look only to the title of Deerfield's 2013 ordinance to understand why. That ordinance was entitled: "An Ordinance Regulating the Ownership and Possession of Assault Weapons in the Village of Deerfield." Aside from the title, the restrictions outlined in Deerfield's 2013 ordinance applied equally to persons who both possessed and owned assault weapons and to persons who possessed such weapons but did not own them. By the plain terms of the 2013 ordinance, whenever an assault weapon was not under the control of or being carried by the owner or some other lawfully authorized user, the weapon had to be secured by them in a locked container or equipped with a tamper-resistant mechanical lock or another safety device. In the majority's view, Deerfield plainly regulated both the possession and ownership of assault weapons within the 10-day window specified in section 13.1(c) of the FOID Card Act.

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[7] The requirements of sections 15-87 and 15-88 did not apply to law enforcement or military personnel. Deerfield Municipal Code §§ 15-87(c), 15-88(b) (added July 1, 2013).

¶ 52 Furthermore, as a practical matter, it is not clear how courts could distinguish between regulations that affect only possession and regulations that affect both possession and ownership. Ownership and possession are interrelated concepts. For example, one definition of "owner" is "[s]omeone who has the right to possess, use, and convey something." Black's Law Dictionary (11th ed. 2019). One definition of "possession" is "[s]omething that a person owns or controls." Black's Law Dictionary (11th ed. 2019). In a similar vein, Deerfield defines "owner" in its municipal code as, in relevant portion, "one who has complete *dominion* over particular property and who is the one in whom legal or equitable title rests." (Emphasis added.) Deerfield Municipal Code § 1-2(a)(25) (added 1963). "Dominion," in turn, is defined as "[c]ontrol; possession." Black's Law Dictionary (11th ed. 2019). In light of these overlapping definitions, it is not clear how an assault weapon ordinance could regulate possession without also regulating ownership. When Deerfield told its residents in 2013 how they had to store and transport their assault weapons, such regulations affected residents' rights as owners of such weapons.

¶ 53 Even if the dissent were correct that "[p]ossession and ownership are completely distinct concepts" (*infra* ¶ 87), at the very least, in its 2013 ordinance, Deerfield timely regulated either the "possession or ownership of assault weapons in a manner that is inconsistent with" the FOID Card Act. 430 ILCS 65/13.1(c) (West 2018). For example, as explained above, Deerfield's 2013 rules relating to storing assault weapons went beyond the requirements of the FOID Card Act. Under the plain language of the statute, that was all that Deerfield needed to do to preserve its authority to regulate assault weapons concurrently with the State.

¶ 54 5. *Deerfield Amended Its 2013 Ordinance*

¶ 55 The next question is whether Deerfield's 2018 ordinances were amendments to the 2013 ordinance, as allowed by section 13.1(c) of the FOID Card Act. We hold that they were.

¶ 56 Our analysis is straightforward. As explained above, by amending section 13.1 of the FOID Card Act in 2013, the legislature created a hybrid balance of regulatory power between the State and local governments, whereby certain home rule units would have the authority to concurrently regulate assault weapons and others would not. Deerfield preserved its power to regulate assault weapons concurrently with the State when it enacted its 2013 ordinance. The legislature explicitly declared that home rule units that preserved their power to regulate assault weapons concurrently with the State could amend their ordinances. See 430 ILCS 65/13.1(c) (West 2018) ("An ordinance enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly may be amended."). In 2018, Deerfield twice purported to amend its 2013 ordinance and imposed a complete civilian ban on assault weapons and large capacity magazines. Because Deerfield had the power to regulate assault weapons concurrently with the State, it was Deerfield's prerogative to ban such weapons, and there were no time limitations for doing so.

¶ 57 Relying on *Athey v. City of Peru*, 22 Ill. App. 3d 363 (1974), the trial court nevertheless conducted a "comparative analysis" of the 2013 and 2018 ordinances to evaluate the extent of the changes. Noting the "significant differences" between the 2013 ordinance and the 2018 ordinances, the court accepted Easterday's and Guns Save Life's arguments that the 2018 ordinances were new ordinances rather than mere amendments to the 2013 ordinance.

¶ 58 In *Athey*, the plaintiff property owners filed an action challenging the City of Peru's ordinance No. 1699, which rezoned an adjacent property from residential to commercial. *Athey*, 22 Ill. App. 3d at 365-66. One disputed issue in the action was whether ordinance No. 1699 was a new ordinance or whether it was an amendment of ordinance No. 1497. *Athey*, 22 Ill. App. 3d at 366. That issue was significant to the litigation because amendments to existing ordinances required a two-thirds vote of the city council to pass, whereas new ordinances could be enacted by

a majority vote. *Athey*, 22 Ill. App. 3d at 366. The appellate court recognized that it was called upon to ascertain the city council's intent. See *Athey*, 22 Ill. App. 3d at 367 ("The primary purpose of construction of ordinances is to determine and give full effect to the intent of the law-making body as revealed by the language used."). Ascertaining that intent was complicated, however, by the fact that ordinance No. 1699's introductory clause was ambiguous: " 'Whereas the City of Peru, Illinois now desires to amend comprehensively its existing ordinance by adopting a new ordinance.' " *Athey*, 22 Ill. App. 3d at 367. Additionally, during the legislative process, the city council interchangeably referred to ordinance No. 1699 as a "comprehensive amendment" and a "new ordinance." *Athey*, 22 Ill. App. 3d at 367. Under those circumstances, the court undertook a "comparative analysis" of the two ordinances. *Athey*, 22 Ill. App. 3d at 368. Upon doing so, the court determined that ordinance No. 1699 was a new ordinance rather than an amendment of ordinance No. 1497. *Athey*, 22 Ill. App. 3d at 368.

¶ 59 Unlike in *Athey*, there is no need to undertake a comparative analysis of Deerfield's ordinances. Deerfield indicated that it intended for the 2018 ordinances to serve as amendments to the 2013 ordinance. For example, the titles of the 2018 ordinances reflected that intent, as did the ordinances' introductory paragraphs. All changes were reflected by striking through language that was to be removed from the municipal code and underlining language to be added. There was no ambiguity as to Deerfield's intent, so we need not resort to additional cannons of interpretation to ascertain that intent.

¶ 60 The other cases that the trial court cited—*Village of Park Forest v. Wojciechowski*, 29 Ill. 2d 435 (1963), and *Nolan v. City of Granite City*, 162 Ill. App. 3d 187 (1987)—are distinguishable. The issue in both of those cases was whether ordinances remained in effect after the respective municipal bodies enacted other ordinances touching on the same subjects. In the present case, by

contrast, there is no ambiguity or dispute as to which portions of the 2013 ordinance remained in effect after the enactment of the 2018 ordinances.

¶ 61 Even so, both *Wojciechowski* and *Nolan* recognized that the paramount consideration is whether the municipal body intended to amend versus repeal the earlier ordinance. See *Wojciechowski*, 29 Ill. 2d at 439 ("[T]here was no manifestation of an intent to entirely revise and repeal the original ordinance."); *Nolan*, 162 Ill. App. 3d at 190 ("We find no intention to repeal ordinance No. 2574 in ordinance 2910 or any evidence of inconsistency between the two."). Deerfield intended for its 2018 ordinances to serve as amendments to the 2013 ordinance, not to repeal the 2013 ordinance. The trial court essentially concluded that, notwithstanding this clearly expressed intent, the changes that Deerfield made were more drastic than the legislature contemplated when it enacted section 13.1(c) of the FOID Card Act. We find no support for the trial court's decision on this point in the case law or the text of section 13.1(c).

¶ 62 Both Easterday and Guns Save Life note that section 1-7 of the Deerfield Municipal Code provides:

> "The provisions appearing in this Code, insofar as they relate to the same subject matter and are substantially the same as those ordinance provisions previously adopted by the Village and existing at the effective date of this Code, shall be considered as restatements and continuations thereof and not as new enactments." Deerfield Municipal Code § 1-7 (added 1963).

According to Easterday and Guns Save Life, Deerfield's 2018 ordinances were not substantially the same as the 2013 ordinance, so they must be new enactments rather than amendments. We reject this reasoning. The provision that Easterday and Guns Save Life cite merely indicates that, when Deerfield enacted its municipal code, Deerfield generally intended to restate its ordinances

that were already in existence. Contrary to what Easterday and Guns Save Life argue, section 1-7 does not invite courts to second guess Deerfield's intent where, as here, it specifically declared that it intended to amend an ordinance.

¶ 63 We already outlined the majority's view that the dissent's analysis proceeds from the faulty premise that Deerfield regulated the possession but not ownership of assault weapons in its 2013 ordinance. See *supra* ¶¶ 51-53. Even if this premise were correct, however, we would find no support for the conclusion that a home rule unit that timely regulated the possession of assault weapons could not amend its statute outside the 10-day window to regulate ownership. The text of section 13.1(c) of the FOID Card Act certainly does not say that. As noted above, the statute merely says that an ordinance enacted within the 10-day window "may be amended." 430 ILCS 65/13.1(c) (West 2018). When interpreting a statute, a court "must not depart from the plain meaning of the statutory language by reading into it exceptions, limitations, or conditions not expressed by the legislature." *In re Estate of Shelton*, 2017 IL 121199, ¶ 36. We thus should not read an exception into section 13.1(c) by interpreting it to mean that a home rule unit may amend its ordinance so long as it does not switch from regulating possession to regulating ownership.

¶ 64 Moreover, we found nothing supporting the dissent's view in the lengthy floor debates of Public Act 98-63 (eff. July 9, 2013) (the 2013 legislation that enacted the Concealed Carry Act and amended section 13.1 of the FOID Card Act). At no point did any lawmaker mention or insinuate that the legislature intended to distinguish between possessing assault weapons and owning such weapons. Nor did any lawmaker mention or insinuate that home rule units had to ban assault weapons within the 10-day window or forever lose their power to do so.

¶ 65 To the contrary, the legislative history suggests that the legislature intended that home rule units could preserve their authority to regulate assault weapons concurrently with the State simply

by enacting a regulation within the 10-day window. The following excerpt from the exchange between Senators Raoul and Forby (Senator Forby was one of the bill's sponsors) illustrates this point:

> "SENATOR RAOUL: Can a—can a municipality or home rule unit that has enacted a regulation or ordinance either before or within ten days of the effective date that regulates assault weapons amend that regulation or ordinance in the future?
>
> PRESIDING OFFICER (SENATOR MUÑOS): Senator Forby.
>
> SENATOR FORBY: Yes." 98th Ill. Gen. Assem., Senate Proceedings, May 31, 2013, at 21 (statements of Senators Raoul, Muños, and Forby).

Thus, even assuming that the dissent is correct that Deerfield initially regulated only the possession of assault weapons and then subsequently regulated ownership, that is consistent with the legislature's intent.

¶ 66 6. *Impact of Section 13.1(b) of the FOID Card Act and Section 90 of the Concealed Carry Act on Deerfield's Ban of Large Capacity Magazines*

¶ 67 The parties also disagree as to the impact of section 13.1(b) of the FOID Card Act and section 90 of the Concealed Carry Act on Deerfield's ban of large capacity magazines. The trial court determined that, in light of these statutes, "home rule units no longer have the authority to regulate or restrict the licensing and possession of *** handgun ammunition with respect to a holder of a valid Firearm Owner's Identification Card or a holder of a license to carry a concealed firearm." On appeal, Deerfield maintains that large capacity magazines are commonly understood as components of assault weapons. Deerfield would have us believe that large capacity magazines are also exclusively components of assault weapons. To that end, Deerfield emphasizes that assault-weapon bans across the country traditionally have included bans of large capacity

magazines. Easterday and Guns Save Life assert that Deerfield forfeited its arguments on these points and that, forfeiture aside, Deerfield's arguments lack merit. Essentially, Easterday and Guns Save Life contend that large capacity magazines are not exclusive to assault weapons and can be used with handguns.

¶ 68 In its reply brief, Deerfield points to a four-page colloquy between its counsel and the trial court, which Deerfield maintains was sufficient to preserve this issue for appeal. During that colloquy, Deerfield's counsel mentioned some, but not all, of the points that Deerfield now raises in support of its argument on appeal. Under the circumstances, we choose to overlook any forfeiture and address the merits, as doing so is necessary to obtain a just result and to maintain a sound and uniform body of precedent. See *Jill Knowles Enterprises, Inc. v. Dunkin*, 2017 IL App (2d) 160811, ¶ 22.

¶ 69 Section 13.1(b) of the FOID Card Act unambiguously prohibits home rule units from regulating handgun ammunition in a manner that is inconsistent with the FOID Card Act:

> "Notwithstanding subsection (a) of this Section, the regulation, licensing, possession, and registration of handguns and ammunition for a handgun *** are exclusive powers and functions of this State. Any ordinance or regulation, or portion of that ordinance or regulation, enacted on or before the effective date of this amendatory Act of the 98th General Assembly that purports to impose regulations or restrictions on a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act in a manner that is inconsistent with this Act, on the effective date of this amendatory Act of the 98th General Assembly, shall be invalid in its application to a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act." 430 ILCS 65/13.1(b) (West 2018).

Section 90 of the Concealed Carry Act similarly prohibits home rule units from regulating handgun ammunition in a manner that is inconsistent with the Concealed Cary Act:

> "The regulation, licensing, possession, registration, and transportation of handguns and ammunition for handguns by licensees are exclusive powers and functions of the State. Any ordinance or regulation, or portion thereof, enacted on or before the effective date of this Act that purports to impose regulations or restrictions on licensees or handguns and ammunition for handguns in a manner inconsistent with this Act shall be invalid in its application to licensees under this Act on the effective date of this Act. This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution." 430 ILCS 66/90 (West 2018).

¶ 70 The question presented is whether Deerfield's ban of large capacity magazines improperly regulates handgun ammunition. Deerfield defines "large capacity magazine" as

> "any ammunition feeding device with the capacity to accept more than ten rounds, but shall not be construed to include the following:
>
> (1) A feeding device that has been permanently altered so that it cannot accommodate more than ten rounds.
>
> (2) A 22 caliber tube ammunition feeding device.
>
> (3) A tubular magazine that is contained in a lever-action firearm." Deerfield Municipal Code § 15-86 (added July 1, 2013).

Guns Save Life asserts that many popular handguns that do not qualify as "assault weapons" under Deerfield's definition of that term come standard with magazines that hold more than 10 rounds. Deerfield does not dispute that assertion. Moreover, when the trial court questioned Deerfield's counsel about whether Deerfield's definition of "large capacity magazine" was overbroad to the

extent that it applied to handgun ammunition, counsel acknowledged that Deerfield bans "any magazine ten rounds or more."

¶ 71 Deerfield nevertheless insists that large capacity magazines are exclusively components of assault weapons. The plain language of Deerfield's definition of "large capacity magazine," however, does not exclude handgun ammunition. Deerfield also claims that its definitions of "assault weapon" and "large capacity magazine" are similar or identical to those that have been enacted across the country and which have withstood challenges on second amendment grounds. See, *e.g.*, *Wilson v. Cook County*, 937 F.3d 1028 (7th Cir. 2019); *Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015). Be that as it may, the plaintiffs here challenge Deerfield's ban of large capacity magazines on preemption grounds, not second amendment grounds, and the Illinois legislature has indicated that home rule units may not regulate ammunition for handguns in a manner that is inconsistent with State law. It is the judiciary's role to enforce statutes as written, not to question the wisdom of the legislature. See *Manago v. County of Cook*, 2017 IL 121078, ¶ 10 ("Whenever possible, courts must enforce clear and unambiguous statutory language as written, without reading in unstated exceptions, conditions, or limitations."). As our supreme court explained in *Illinois Landowners Alliance, NFP v. Illinois Commerce Comm'n*, 2017 IL 121302, ¶ 50: "[T]he wisdom of this state's regulatory system is a matter for the legislature, not our court. Of all the principles of statutory construction, few are more basic than that a court may not rewrite a statute to make it consistent with the court's own idea of orderliness and public policy." We thus hold that, to the extent that Deerfield's ban of large capacity magazines regulates ammunition for handguns, it is preempted in its application to holders of valid FOID cards and concealed carry licenses by section 13.1(b) of the FOID Card Act and section 90 of the Concealed

Carry Act. Accordingly, on this limited point, we affirm the trial court's grant of summary judgment in favor of Easterday and Guns Save Life.

¶ 72 7. *Proposed Alternative Basis to Affirm*

¶ 73 Guns Save Life argues that, as an alternative basis to affirm the trial court's judgment, we should conclude that the Wildlife Code preempts Deerfield's bans of assault weapons and large capacity magazines. We lack jurisdiction to consider this issue because Guns Save Life's claims regarding the Wildlife Code remain pending in the trial court.

¶ 74 In counts II and IV of its amended complaint, Guns Save Life alleged that Deerfield's 2018 ordinances were preempted by the Wildlife Code insofar as they banned assault weapons and large capacity magazines. Guns Save Life moved for summary judgment on all of its claims. Deerfield opposed Guns Save Life's motion for summary judgment but did not file a cross-motion for summary judgment.

¶ 75 On March 22, 2019, the trial court determined that the Wildlife Code *did not* preempt Deerfield's 2018 ordinances. The effect of that ruling was to deny summary judgment with respect to counts II and IV of Guns Save Life's amended complaint. On September 6, 2019, the court made Rule 304(a) findings with respect to counts I through IV of Guns Save Life's amended complaint.

¶ 76 "The denial of a summary judgment motion is not a final order and is normally not appealable even where the court has made a finding pursuant to Illinois Supreme Court Rule 304(a)." *Fogt v. 1-800-Pack-Rat, LLC*, 2017 IL App (1st) 150383, ¶ 95. The exception to this rule is where the parties file cross-motions for summary judgment and the trial court disposes of all issues in the case by granting one motion and denying the other. *Fogt*, 2017 IL App (1st) 150383,

¶ 95. The parties here did not file cross-motions for summary judgment and the trial court did not

dispose of all issues in the case, so the exception does not apply. We lack jurisdiction to review the court's denial of summary judgment with respect to counts II and IV of Guns Save Life's amended complaint.

¶ 77 8. *Summary of Holdings*

¶ 78 In summary, we hold that (1) section 13.1 of the FOID Card Act does not preempt all regulation of assault weapons by home rule units; (2) Deerfield, in its 2013 ordinance, regulated the possession and ownership of assault weapons in a manner that was inconsistent with the FOID Card Act, thus preserving its power to regulate assault weapons concurrently with the State; (3) Deerfield's 2018 ordinances were amendments to the 2013 ordinance, as allowed by section 13.1(c) of the FOID Card Act; (4) to the extent that Deerfield's ban of large capacity magazines regulates ammunition for handguns, it is preempted in its application to holders of valid FOID cards and concealed carry licenses by section 13.1(b) of the FOID Card Act and section 90 of the Concealed Carry Act; and (5) we lack jurisdiction to consider Guns Save Life's claims that Deerfield's bans of assault weapons and large capacity magazines are preempted by the Wildlife Code. Accordingly, we affirm in part and reverse in part the trial court's orders granting summary judgment in favor of Easterday and Guns Save Life. We affirm the orders granting the permanent injunctions only insofar as that, to the extent that Deerfield's ban of large capacity magazines regulates ammunition for handguns, Deerfield is prohibited from enforcing that regulation against persons who hold valid FOID cards or concealed carry licenses. In all other respects, the permanent injunctions are vacated. We remand the cause for further proceedings consistent with this opinion.

¶ 79 III. CONCLUSION

¶ 80 For the foregoing reasons, we affirm the judgments of the circuit court of Lake County in part and reverse the judgments in part. We vacate the permanent injunctions in part and remand the cause for further proceedings consistent with this opinion.

¶ 81 Affirmed in part and reversed in part. Permanent injunctions vacated in part. Cause remanded.

¶ 82 JUSTICE McLAREN, concurring in part and dissenting in part.

¶ 83 I dissent from the majority's conclusion that Deerfield, in its 2013 ordinance, regulated ownership of assault weapons, and that Deerfield's 2018 ordinance[8] prohibiting the ownership of assault weapons was an amendment allowed by the legislature.

¶ 84 In section 13.1(c) of the FOID Card Act, the legislature allowed home rule municipalities to "regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act." 430 ILCS 65/13.1(c) (West 2018). Such opportunity had to be exercised on, before, or within 10 days after the effective date of the amendatory Act. *Id.* Deerfield acted within this time frame, enacting the 2013 ordinance that provided:

> "It shall be unlawful to store or keep any assault weapon in the Village unless such weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user. For purposes of this section, such weapon shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user." Deerfield Municipal Code § 15-87(a) (added July 1, 2013).

[8] While Deerfield passed two 2018 ordinances relevant to the case, I will refer to them as a singular ordinance.

The ordinance also limited where in the Village a person could "carry or possess" an assault weapon and provided for various methods of transportation of assault weapons in otherwise-prohibited areas. See Deerfield Municipal Code § 15-88(a) (added July 1, 2013).

¶ 85 The majority makes the bald assertion that Deerfield's 2013 ordinance "regulated the possession *and ownership* of assault weapons beyond what was required by the [FOID] Act." (Emphasis added). *Supra* ¶ 50. "Regulate" is defined as "to govern or direct according to rule"; "to bring under the control of law or constituted authority"; "to make regulations for or concerning." Merriam Webster Online Dictionary, https://www.merriam-webster.com/dictionary/regulate (last visited Nov. 4, 2020) [https://perma.cc/KJA4-CPQC].

¶ 86 The 2013 ordinance regulated the *possession* of assault weapons, imposing restrictions on *how* assault weapons may be stored, kept, and transported. However, that ordinance in no way regulated the *ownership* of assault weapons. The 2013 ordinance allowed one to store or keep an assault weapon in the Village so long as it was secured in such a way as to make it inoperable by anyone other than the owner or an authorized user. Further, it provided that an assault weapon "shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user." Deerfield Municipal Code, § 15-87(a) (added July 1, 2013). The ordinance also limited where in the Village assault weapons could be carried or possessed and how they could be transported, but ownership of assault weapons was never addressed, let alone "in a manner that is inconsistent with this [FOID] Act." See 430 ILCS 65/13.1(c) (West 2018).

¶ 87 However, the majority never explains how the ordinance regulated *ownership* of assault weapons. Possession and ownership are completely distinct concepts, and we must give meaning to the legislature's use of these concepts separately. The majority's claim that possession and

ownership are indistinguishable (see *supra* ¶ 52) is both weak[9] and irrelevant. To "regulate" ownership involves limiting who may own some item, even to the point of prohibiting ownership of the item. The 2013 ordinance did not prevent anyone eligible to own an assault weapon under state law from owning one. The 2013 ordinance did not regulate ownership; it *assumed* ownership of such weapons within the village. It specifically contemplated the carrying, control, and operation of assault weapons by owners and other authorized users. None of the requirements regarding securing an assault weapon or using a lock or other security device apply when the owner or any other authorized user is carrying or controlling the weapon. The ordinance did not impose any greater restrictions on *ownership* of assault weapons than the FOID Act imposed. It merely regulated where a person could carry or possess assault weapons, how the owner must store such weapons when they are not being carried, and how they may be transported.

¶ 88 The FOID Act allowed home-rule municipalities to "regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act." 430 ILCS 65/13.1(c) (West 2018). It also allowed for the future amendment of an ordinance enacted on, before, or within 10 days after the effective date of the Act. Because Deerfield did not act to regulate ownership of assault weapons within the allotted 10-day window with its 2013 ordinance, the majority's conclusion that the 2018 ordinance prohibiting ownership is an amendment allowed under the FOID Act is an enthymeme. A legislative enactment that explicitly recognizes the right to own an assault weapon is not "amended" by a later enactment that prohibits such ownership; it is superseded by it. The Law Dictionary (featuring Black's Law Dictionary Free Online Legal Dictionary (2d Ed.)) defines "amend" as "To improve; to make better by change or modification." The Law Dictionary, https://thelawdictionary.org/amend/ (last visited Nov. 4, 2020) https://perma.

[9] For example, you cannot legally sell your friend's car when he merely loans it to you.

cc/QT9T-AXMC. It defines "supersede" as "To annul; to stay; to suspend." The Law Dictionary, https://thelawdictionary.org/supersede/ (last visited Nov. 4, 2020) [https://perma.cc/4M4T-L879]. Having regulated the storage and transportation of assault weapons in 2013, Deerfield could have changed or modified those restrictions, either increasing or decreasing the severity of the restrictions in the 2018 ordinance. However, Deerfield did not regulate ownership, and one cannot amend a regulation that does not exist. Deerfield's 2018 ordinance did not merely "improve" or "make better" the 2013 ordinance; it annulled the 2013 ordinance, wiping out the right to ownership of assault weapons that Deerfield had explicitly recognized in 2013. It was a complete reversal of its 2013 ordinance, now prohibiting that which had previously clearly been allowed.

¶ 89 Looking to the titles and introductory paragraphs of the 2018 ordinances, the majority posits that the 2018 ordinance was an amendment of the 2013 ordinance because:

> "Deerfield indicated that it intended for the 2018 ordinances to serve as amendments to the 2013 ordinance. For example, the titles of the 2018 ordinances reflected that intent, as did the ordinances' introductory paragraphs. All changes were reflected by striking through language that was to be removed from the municipal code and underlining language to be added. There was no ambiguity as to Deerfield's intent, so we need not resort to additional cannons of interpretation to ascertain that intent." *Supra* ¶ 59.

There is a riddle attributed to Abraham Lincoln: how many legs does a dog have if you call his tail a leg? The answer, of course, is four; calling a tail a leg does not make it a leg. See BrainyQuote, https://www.brainyquote.com/quotes/abraham_lincoln_107482 (last visited Nov. 4, 2020) [https://perma.cc/6DYW-XXKF]. Similarly, here, the simple act of calling the 2018 ordinance an amendment of the 2013 ordinance does not make it one. "We view the statute as a whole, construing words and phrases in light of other relevant statutory provisions and not in isolation."

People v. Gutman, 2011 IL 110338, ¶ 12. Further, we assume that, whenever a legislative body enacts a provision, it has in mind previous statutes relating to the same subject matter such that they should all be construed together. See *People v. Davis*, 199 Ill. 2d 130, 137 (2002). The majority states that it believes that Deerfield "indicated" what it "intended" to do with the 2018 ordinance (*supra* ¶ 59); however, viewing the 2018 ordinance in the context of the 2013 ordinance, what Deerfield *did* in 2018 was to regulate the ownership of assault weapons, an issue that it did not regulate when it had the opportunity to do so in 2013.

¶ 90 I also find unpersuasive the majority's assertion that the 2018 ordinance was an amendment because "changes were reflected by striking through language that was to be removed from the municipal code and underlining language to be added." *Supra* ¶ 59. Had Deerfield struck any references to assault rifles and added underlined references to dogs, would that be an indication that the new ordinance was an amendment of Deerfield's animal control ordinance? Again, Deerfield did not regulate ownership in 2013; its addition of ownership in the 2018 ordinance indicates an attempt to write new legislation, not to amend an ordinance that did not regulate ownership.

¶ 91 The majority's use of the legislative history for support (*supra* ¶¶ 64-65) is puzzling. First, we already knew that amendments of ordinances passed within the 10-day window were allowed. See 430 ILCS 65/13.1 (West 2018). Second, the argument based on the quoted passage is a textbook exercise in tautology. In essence, the majority says, "Because Senator Forby said that municipalities can amend, this is an amendment." I have argued that the 2018 ordinance was not an amendment of the 2013 ordinance but a supersedure of that ordinance. Nothing in the cited

legislative debate addresses, let alone refutes, my argument or can be used to support a claim that a municipality can use a new ordinance to nullify or supersede a previous ordinance.[10]

¶ 92 Perhaps an analogy to a more mundane issue of governance will more clearly demonstrate the majority's analysis is faulty. Assume that, in 2013, Deerfield passed an ordinance requiring that the owners of pickup trucks park their trucks in a driveway or garage when they are not using the trucks. Then, in 2018, Deerfield passed a new ordinance prohibiting the ownership of pickup trucks in the Village. Would the majority consider the parking restrictions on pickup trucks to be a regulation of ownership? Would it consider the 2018 prohibition of ownership a mere "amendment" of the 2013 parking ordinance? Both the actual and the fictional 2013 ordinances assumed ownership of the items at issue and merely regulated how they must be stored and secured. The 2018 ordinances outlawed their possession. Would the majority really consider the outlawing of pickup trucks to be an amendment of parking regulations?

¶ 93 "[T]he Second Amendment protects a personal right to keep and bear arms for lawful purposes, most notably for self-defense within the home." *McDonald v. City of Chicago, Illinois,* 561 U.S. 742, 780 (2010). This right also extends to self-defense outside the home. See *People v. Aguilar*, 2013 IL 112116, ¶ 21. Deerfield's 2013 ordinance appears to have paid heed to this. It did not affect the right to own assault weapons; it merely addressed how such weapons had to be stored in the home when they were not being carried or under the control of the owner or another authorized user. However, the 2018 ordinance strikes at the very heart of the right to bear arms for self-defense. Where a government's actions restrict or regulate the exercise of second amendment

[10] The majority's whimsical exploration of the "lengthy floor debates" (*supra* ¶ 64) produces a single exchange—one question with a monosyllabic answer—that Baron von Munchausen could employ for support.

rights, Illinois courts apply heightened means-ends scrutiny to the government's justification for its regulations. See *People v. Chairez*, 2018 Il 121417, ¶ 21. While these cases were not brought on constitutional grounds, they do involve restrictions that affect second amendment rights. The flaccid foundation for the majority's conclusion ("Well, that is what the Village said that it wanted to do.") certainly falls well short of the scrutiny that should be applied in this case.

¶ 94 Ultimately, the legislature gave home-rule municipalities the opportunity to regulate ownership of assault weapons, possession of assault weapons, or both. Such regulation had to occur within a specific 10-day period. Deerfield regulated possession *only* of assault weapons within that period. It did not restrict, let alone prohibit, ownership of assault weapons in Deerfield. The majority's conclusion that "it was Deerfield's prerogative to ban such weapons, and there were no time limitations for doing so" (*supra* ¶ 56) is factually and legally wrong. Deerfield's attempt to ban ownership of assault weapons in 2018 was late and outside the intent of the legislature. The trial court should be affirmed.

No. 2-19-0879

Cite as:	*Easterday v. Village of Deerfield*, 2020 IL App (2d) 190879
Decision Under Review:	Appeal from the Circuit Court of Lake County, Nos. 18-CH-427, 18-CH-498; the Hon. Luis A. Berrones, Judge, presiding.
Attorneys for Appellant:	Christopher B. Wilson, John B. Sample, and Christopher P. Eby, of Perkins Coie LLP, and Steven M. Elrod and Hart M. Passman, of Elrod Friedman LLP, both of Chicago, and Jonathan E. Lowy, of Washington, D.C., for appellants.
Attorneys for Appellee:	David G. Sigale, of Law Firm of David G. Sigale, P.C., of Wheaton, for appellees Daniel D. Easterday, Illinois State Rifle Ass'n, and Second Amendment Foundation, Inc. Christian D. Ambler, of Stone & Johnson, Chtrd., of Chicago, and Brian W. Barnes, of Cooper & Kirk, PLLC, of Washington, D.C., for other appellees.

VILLAGE OF DEERFIELD
LAKE AND COOK COUNTIES, ILLINOIS

ORDINANCE NO. 0-13-24

AN ORDINANCE REGULATING THE OWNERSHIP
AND POSSESSION OF ASSAULT WEAPONS
IN THE VILLAGE OF DEERFIELD

PASSED AND APPROVED BY THE
PRESIDENT AND BOARD OF TRUSTEES
OF THE VILLAGE OF DEERFIELD, LAKE
AND COOK COUNTIES, ILLINOIS, this

1st day of July, 2013.

Published in pamphlet form
by authority of the President
and Board of Trustees of the
Village of Deerfield, Lake and
Cook Counties, Illinois, this
1st day of July, 2013.

VILLAGE OF DEERFIELD
LAKE AND COOK COUNTIES, ILLINOIS

ORDINANCE NO. 0-13-24

AN ORDINANCE REGULATING THE OWNERSHIP
AND POSSESSION OF ASSAULT WEAPONS
IN THE VILLAGE OF DEERFIELD

WHEREAS, the Illinois General Assembly has adopted House Bill 183, the "Firearm Concealed Carry Act," which will become effective upon signature by the Governor of the State of Illinois; and

WHEREAS, the Firearm Concealed Carry Act will preempt the authority of home rule units of government in the State of Illinois, including the Village of Deerfield, to regulate assault weapons unless such a home rule ordinance or regulation is enacted on, before or within ten (10) days after the effective date of the Firearm Concealed Carry Act; and

WHEREAS, the corporate authorities of the Village of Deerfield are of the opinion that assault weapons, as defined in this Ordinance, are subject to regulation as provided herein, and should be regulated as provided herein within the corporate limits of the Village of Deerfield; and

WHEREAS, the corporate authorities of the Village of Deerfield find that assault weapons are capable of a rapid rate of fire and have the capacity to fire a large number of rounds due to large capacity fixed magazines or the ability to use detachable magazines; and,

WHEREAS, the corporate authorities of the Village of Deerfield find that assault weapons have been used in a number of notorious mass shooting incidents in venues such as public schools, including recent shooting incidents in Newtown, Connecticut, and Santa Monica, California, and are commonly associated with military or antipersonnel use; and

WHEREAS, the corporate authorities of the Village of Deerfield find that assault weapons should be subject to safe storage and security requirements as provided herein to limit the opportunity for access and use of these firearms by untrained or unauthorized users;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF DEERFIELD, LAKE AND COOK COUNTIES, ILLINOIS, in the exercise of its home rule powers, as follows:

SECTION 1: That Chapter 15 ("Morals and Conduct") of the Municipal Code of the Village of Deerfield be and the same is hereby amended to add the following as Article 11 thereof entitled "Assault Weapons":

Article 11. Assault Weapons.

Sec. 15-86. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Assault weapon means:

(1) A semiautomatic rifle that has the capacity to accept a large capacity magazine detachable or otherwise and one or more of the following:

- (A) Only a pistol grip without a stock attached;
- (B) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;
- (C) A folding, telescoping or thumbhole stock;
- (D) A shroud attached to the barrel, or that partially or completely encircles the barrel, allowing the bearer to hold the firearm with the non-trigger hand without being burned, but excluding a slide that encloses the barrel; or
- (E) A muzzle brake or muzzle compensator.

(2) A semiautomatic rifle that has a fixed magazine that has the capacity to accept more than ten rounds of ammunition.

(3) A semiautomatic pistol that has the capacity to accept a detachable magazine and has one or more of the following:

(A) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;
(B) A folding, telescoping or thumbhole stock;
(C) A shroud attached to the barrel, or that partially or completely encircles the barrel, allowing the bearer to hold the firearm with the non-trigger hand without being burned, but excluding a slide that encloses the barrel;
(D) The capacity to accept a detachable magazine at some location outside of the pistol grip.

(4) A semiautomatic shotgun that has one or more of the following:

(A) Only a pistol grip without a stock attached;
(B) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;
(C) A folding, telescoping or thumbhole stock;
(D) A fixed magazine capacity in excess of five rounds; or
(E) An ability to accept a detachable magazine.

(5) Any shotgun with a revolving cylinder.

(6) Conversion kit, part or combination of parts, from which an assault weapon can be assembled if those parts are in the possession or under the control of the same person.

(7) Shall include, but not be limited to, the assault weapons models identified as follows:

(A) The following rifles or copies or duplicates thereof:
(i) AK, AKM, AKS, AK-47, AK-74, ARM, MAK90, Misr, NHM 90, NHM 91, SA 85, SA 93, VEPR;
(ii) AR-10;
(iii) AR-15, Bushmaster XM15, Armalite M15, or Olympic Arms PCR;
(iv) AR70;
(v) Calico Liberty;
(vi) Dragunov SVD Sniper Rifle or Dragunov SVU;
(viii) Fabrique National FN/FAL, FN/LAR, or FNC;
(viii) Hi-Point Carbine;
(ix) HK-91, HK-93, HK-94, or HK-PSG-1;
(x) Kel-Tec Sub Rifle;
(xi) Saiga;
(xii) SAR-8, SAR-4800;
(xiii) SKS with detachable magazine;
(xiv) SLG 95;
(xv) SLR 95 or 96;
(xvi) Steyr AUG;
(xvii) Sturm, Ruger Mini-14;
(xviii) Tavor;

(xix) Thompson 1927, Thompson M1, or Thompson 1927 Commando; or
(xx) Uzi, Galil and Uzi Sporter, Galil Sporter, or Galil Sniper Rifle (Galatz).

(B) The following pistols or copies or duplicates thereof, when not designed to be held and fired by the use of a single hand:

(i) Calico M-110;
(ii) MAC-10, MAC-11, or MPA3;
(iii) Olympic Arms OA;
(iv) TEC-9, TEC-DC9, TEC-22 Scorpion, or AB-10; or
(v) Uzi.

(C) The following shotguns or copies or duplicates thereof:
(i) Armscor 30 BG;
(ii) SPAS 12 or LAW 12;
(iii) Striker 12; or
(iv) Streetsweeper.

"Assault weapon" does not include any firearm that has been made permanently inoperable, or satisfies the definition of "antique firearm," stated in this section, or weapons designed for Olympic target shooting events.

Detachable magazine means any ammunition feeding device, the function of which is to deliver one or more ammunition cartridges into the firing chamber, which can be removed from the firearm without the use of any tool, including a bullet or ammunition cartridge.

Large capacity magazine means any ammunition feeding device with the capacity to accept more than ten rounds, but shall not be construed to include the following:

(1) A feeding device that has been permanently altered so that it cannot accommodate more than ten rounds.
(2) A 22 caliber tube ammunition feeding device.
(3) A tubular magazine that is contained in a lever-action firearm.

Muzzle brake means a device attached to the muzzle of a weapon that utilizes escaping gas to reduce recoil.

Muzzle compensator means a device attached to the muzzle of a weapon that utilizes escaping gas to control muzzle movement.

Sec. 15-87. Safe Storage of Assault Weapons; Exceptions.

(a) Safe Storage. It shall be unlawful to store or keep any assault weapon in the Village unless such weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render such

weapon inoperable by any person other than the owner or other lawfully authorized user. For purposes of this section, such weapon shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user.

(b) Self defense exception. No person shall be punished for a violation of this section if an assault weapon is used in a lawful act of self-defense or in defense of another.

(c) The provisions of this section do not apply to (i) any law enforcement officer, agent or employee of any municipality of the State of Illinois (ii) any law enforcement officer, agent or employee of the State of Illinois, of the United States, or of any other state (iii) any member of the military or other service of any state or the United States, including national guard and reserves, if the persons described are authorized by a competent authority to so carry an assault weapon loaded on a public way and such person is acting within the scope of his duties or training.

Section 15-88. Transportation of Assault Weapons; Exceptions.

(a) It is unlawful and a violation of this section for any person to carry or possess an assault weapon in the Village, except when on his land or in his own abode, legal dwelling or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, except that this section does not apply to or affect transportation of assault weapons that meet one of the following conditions:

(i) are broken down in a non-functioning state; or
(ii) are not immediately accessible; or
(iii) are unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card; or

(b) The provisions of this section do not apply to (i) any law enforcement officer, agent or employee of any municipality of the State of Illinois (ii) any law enforcement officer, agent or employee of the State of Illinois, of the United States, or of any other state (iii) any member of the military or other service of any state or the United States, including national guard and reserves officer, agent or employee of any municipality of the commonwealth, if the persons described are authorized by a competent authority to so carry an assault weapon loaded on a public way and such person is acting within the scope of his duties or training.

Section 15-89. Penalty. Any person who is found to have violated this Article shall be fined not less than $250 and not more than $1,000 for each offense.

SECTION 2: If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

SECTION 3: That this Ordinance, and each of its terms, shall be the effective legislative act of a home rule municipality without regard to whether such Ordinance should: (a) contain terms contrary to the provisions of current or subsequent non-preemptive state law; or, (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the corporate authorities of the Village of Deerfield that to the extent that the terms of this Ordinance should be inconsistent with any non-preemptive state law, this Ordinance shall supersede state law in that regard within its jurisdiction.

SECTION 4: This Ordinance shall be in full force and effect upon its passage and approval and shall subsequently be published in pamphlet form as provided by law.

PASSED this 1st day of July, 2013.

AYES: Benton, Jester, Seiden, Struthers

NAYS: None

ABSENT: Farkas, Nadler

ABSTAIN:

APPROVED this 1st day of July, 2013.

Harriet Rosenthal
Village President

ATTEST:

Kathleen Stetsko
Village Clerk

VILLAGE OF DEERFIELD
LAKE AND COOK COUNTIES, ILLINOIS

ORDINANCE NO. O-18-06

AN ORDINANCE AMENDING CHAPTER 15 (MORALS AND CONDUCT), ARTICLE 11 (ASSAULT WEAPONS), SECTION 15-87 (SAFE STORAGE OF ASSAULT WEAPONS) AND SECTION 15-88 (TRANSPORTATION OF ASSAULT WEAPONS) OF THE MUNICIPAL CODE OF THE VILLAGE OF DEERFIELD TO REGULATE THE POSSESSION, MANUFACTURE AND SALE OF ASSAULT WEAPONS IN THE VILLAGE OF DEERFIELD

PASSED AND APPROVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF DEERFIELD, LAKE AND COOK COUNTIES, ILLINOIS, this

2nd day of April, 2018.

Published in pamphlet form by authority of the President and Board of Trustees of the Village of Deerfield, Lake and Cook Counties, Illinois, this 2nd day of April, 2018.

VILLAGE OF DEERFIELD
LAKE AND COOK COUNTIES, ILLINOIS

ORDINANCE NO. O-18-06

AN ORDINANCE AMENDING CHAPTER 15 (MORALS AND CONDUCT), ARTICLE 11 (ASSAULT WEAPONS), SECTION 15-87 (SAFE STORAGE OF ASSAULT WEAPONS) AND SECTION 15-88 (TRANSPORTATION OF ASSAULT WEAPONS) OF THE MUNICIPAL CODE OF THE VILLAGE OF DEERFIELD TO REGULATE THE POSSESSION, MANUFACTURE AND SALE OF ASSAULT WEAPONS IN THE VILLAGE OF DEERFIELD

WHEREAS, Chapter 15 (Morals and Conduct), Article 11 (Assault Weapons), Section 15-87 (Safe Storage of Assault Weapons; Exceptions) and Section 15-88 (Transportation of Assault Weapons; Exceptions) of the Municipal Code of the Village of Deerfield, as enacted by Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013), regulate the possession, storage and transportation of assault weapons in the Village of Deerfield; and

WHEREAS, the Firearm Concealed Carry Act, 430 ILCS 65/13.1(c), as amended by Public Act 98-63, § 150 (eff. July 9, 2013), provides that the Village of Deerfield, as a home rule unit of local government under the provisions of Article VII, Section 6 of the Illinois Constitution of 1970, may amend Village of Deerfield Ordinance No. 0-13-24, which was enacted on, before or within ten (10) days after the effective date of Public Act 98-63, § 150, pursuant to the Village's home rule exercise of any power and performance of any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; and

WHEREAS, the corporate authorities of the Village of Deerfield find that, since the enactment of Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013), assault weapons have been increasingly used in an alarming number of notorious mass shooting incidents at public

schools, public venues, places of worship and places of public accommodation including, but not limited to, the recent mass shooting incidents in Parkland, Florida (Margery Stoneman Douglas High School; 17 people killed), Sutherland Springs, Texas (First Baptist Church; 26 people killed), Las Vegas, Nevada (Music Festival; 58 people killed), and Orlando, Florida (Pulse Nightclub; 49 people killed); and

WHEREAS, the corporate authorities of the Village of Deerfield find that assault weapons are dangerous and unusual weapons which are commonly associated with military or antipersonnel use, capable of a rapid rate of fire, have the capacity to fire a large number of rounds due to large capacity fixed magazines or the ability to use detachable magazines, present unique dangers to law enforcement, and are easily customizable to become even more dangerous weapons of mass casualties and destruction; and

WHEREAS, the corporate authorities of the Village of Deerfield find that amending Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013) to prohibit the possession, manufacture and sale of assault weapons in the Village of Deerfield may increase the public's sense of safety at the public schools, public venues, places of worship and places of public accommodation located in the Village of Deerfield; and

WHEREAS, the corporate authorities of the Village of Deerfield find that amending Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013) to prohibit the possession, manufacture and sale of assault weapons in the Village of Deerfield may increase the public's sense of safety by deterring and preventing a mass shooting incident in the Village of Deerfield, notwithstanding potential objections regarding the availability of alternative weaponry or the enforceability of such a ban; and

WHEREAS, the corporate authorities of the Village of Deerfield find that amending Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013) to prohibit the possession, manufacture

and sale of assault weapons in the Village of Deerfield may increase the public's sense of safety by effecting a cultural change which communicates the normative value that assault weapons should have no role or purpose in civil society in the Village of Deerfield; and

WHEREAS, the corporate authorities of the Village of Deerfield find that, since the enactment of Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013), the possession, manufacture and sale of assault weapons in the Village of Deerfield is not reasonably necessary to protect an individual's right of self-defense or the preservation or efficiency of a well-regulated militia; and

WHEREAS, the corporate authorities of the Village of Deerfield find that, since the enactment of Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013), courts throughout our State and Nation have uniformly upheld the constitutionality of local ordinances and legislation prohibiting the possession, manufacture and sale of assault weapons including, but not limited to, an ordinance enacted by the City of Highland Park, Illinois; and

WHEREAS, the corporate authorities of the Village of Deerfield find that, since the enactment of Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013), State and Federal authorities have failed to regulate the possession, manufacture and sale of assault weapons in the best interests for the protection of the public health, safety, morals and welfare of the Village of Deerfield; and

WHEREAS, the corporate authorities of the Village of Deerfield request that State and Federal authorities enact Statewide or Nationwide regulations to prohibit the possession, manufacture or sale of assault weapons; and

WHEREAS, the corporate authorities of the Village of Deerfield find that amending Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013) to prohibit the possession, manufacture

and sale of assault weapons in the Village of Deerfield is in the Village's best interests for the protection of the public health, safety, morals and welfare of the Village of Deerfield;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF DEERFIELD, LAKE AND COOK COUNTIES, ILLINOIS, in the exercise of its home rule powers, as follows:

SECTION 1: The recitals to this Ordinance are incorporated into and made a part of this Ordinance as if fully set forth herein.

SECTION 2: Chapter 15 (Morals and Conduct), Article 11 (Assault Weapons), Section 15-86 (Definitions), Section 15-87 (Safe Storage of Assault Weapons; Exceptions) and Section 15-88 (Transportation of Assault Weapons; Exceptions) of the Municipal Code of the Village of Deerfield, as enacted by Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013), shall be amended to read as follows (additions are indicated by underlining and deletions are indicated by ~~strikeout~~ markings):

Article 11. Assault Weapons.

Sec. 15-86. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Assault weapon means:

(1) A semiautomatic rifle that has the capacity to accept a large capacity magazine detachable or otherwise and one or more of the following:

(A) Only a pistol grip without a stock attached;
(B) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;
(C) A folding, telescoping or thumbhole stock;
(D) A shroud attached to the barrel, or that partially or completely encircles the barrel, allowing the bearer to hold the firearm with the non-trigger hand without being burned, but excluding a slide that encloses the barrel; or

(E) A muzzle brake or muzzle compensator.

(2) A semiautomatic rifle that has a fixed magazine that has the capacity to accept more than ten rounds of ammunition.

(3) A semiautomatic pistol that has the capacity to accept a detachable magazine and has one or more of the following:

(A) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;
(B) A folding, telescoping or thumbhole stock;
(C) A shroud attached to the barrel, or that partially or completely encircles the barrel, allowing the bearer to hold the firearm with the non-trigger hand without being burned, but excluding a slide that encloses the barrel;
(D) The capacity to accept a detachable magazine at some location outside of the pistol grip.

(4) A semiautomatic shotgun that has one or more of the following:

(A) Only a pistol grip without a stock attached;
(B) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;
(C) A folding, telescoping or thumbhole stock;
(D) A fixed magazine capacity in excess of five rounds; or
(E) An ability to accept a detachable magazine.

(5) Any shotgun with a revolving cylinder.

(6) Conversion kit, part or combination of parts, from which an assault weapon can be assembled if those parts are in the possession or under the control of the same person.

(7) Shall include, but not be limited to, the assault weapons models identified as follows:

(A) The following rifles or copies or duplicates thereof:
(i) AK, AKM, AKS, AK-47, AK-74, ARM, MAK90, Misr, NHM 90, NHM 91, SA 85, SA 93, VEPR;
(ii) AR-10;
(iii) AR-15, Bushmaster XM15, Armalite M15, or Olympic Arms PCR;
(iv) AR70;
(v) Calico Liberty;
(vi) Dragunov SVD Sniper Rifle or Dragunov SVU;
(viii) Fabrique National FN/FAL, FN/LAR, or FNC;
(viii) Hi-Point Carbine;
(ix) HK-91, HK-93, HK-94, or HK-PSG-1;
(x) Kel-Tec Sub Rifle;

(xi) Saiga;
(xii) SAR-8, SAR-4800;
(xiii) SKS with detachable magazine;
(xiv) SLG 95;
(xv) SLR 95 or 96;
(xvi) Steyr AUG;
(xvii) Sturm, Ruger Mini-14;
(xviii) Tavor;
(xix) Thompson 1927, Thompson M1, or Thompson 1927 Commando; or
(xx) Uzi, Galil and Uzi Sporter, Galil Sporter, or Galil Sniper Rifle (Galatz).

(B) The following pistols or copies or duplicates thereof, when not designed to be held and fired by the use of a single hand:

(i) Calico M-110;
(ii) MAC-10, MAC-11, or MPA3;
(iii) Olympic Arms OA;
(iv) TEC-9, TEC-DC9, TEC-22 Scorpion, or AB-10; or
(v) Uzi.

(C) The following shotguns or copies or duplicates thereof:
(i) Armscor 30 BG;
(ii) SPAS 12 or LAW 12;
(iii) Striker 12; or
(iv) Streetsweeper.

"Assault weapon" does not include any firearm that has been made permanently inoperable, or satisfies the definition of "antique ~~firearm~~ handgun," stated in this ~~section~~ Code, or weapons designed for Olympic target shooting events.

Detachable magazine means any ammunition feeding device, the function of which is to deliver one or more ammunition cartridges into the firing chamber, which can be removed from the firearm without the use of any tool, including a bullet or ammunition cartridge.

Large capacity magazine means any ammunition feeding device with the capacity to accept more than ten rounds, but shall not be construed to include the following:

(1) A feeding device that has been permanently altered so that it cannot accommodate more than ten rounds.
(2) A 22 caliber tube ammunition feeding device.
(3) A tubular magazine that is contained in a lever-action firearm.

Muzzle brake means a device attached to the muzzle of a weapon that utilizes escaping gas to reduce recoil.

Muzzle compensator means a device attached to the muzzle of a weapon that utilizes escaping gas to control muzzle movement.

Sec. 15-87. Safe Storage of Assault Weapons; Exceptions.

(a) ~~Safe Storage.~~ It shall be unlawful to possess, bear, manufacture, sell, transfer, transport, store or keep any assault weapon in the Village, ~~unless such weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user. For purposes of this section, such weapon shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user.~~

(b) ~~Self-defense exception. No person shall be punished for a violation of this section if an assault weapon is used in a lawful act of self-defense or in defense of another.~~

~~(c)~~ The provisions of this section, excluding those pertaining to the manufacture and sale of any assault weapon in the Village, do not apply to (i) any law enforcement officer, agent or employee of any municipality of the State of Illinois (ii) any law enforcement officer, agent or employee of the State of Illinois, of the United States, or of any other state (iii) any member of the military or other service of any state or the United States, including national guard and reserves, if the persons described are authorized by a competent authority to so carry an assault weapon loaded on a public way and such person is acting within the scope of his duties or training, or (iv) any qualified retired law enforcement officer, as that term is defined in 18 U.S.C. § 926C(c); however, any such assault weapon subject to the aforesaid exceptions under this section shall be safely stored and secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user, or broken down in a nonfunctioning state and not immediately accessible to any person, or unloaded and enclosed in a case, firearm carrying box, shipping box or other container by a person who has been issued a currently valid Firearm Owner's Identification Card, except as may otherwise be lawfully provided by the rules, regulations, general orders, ordinances or laws regulating the conduct of any such law enforcement officer, service member or qualified retired law enforcement officer.

Section 15-88. Transportation of Assault Weapons; Exceptions.

(a) It is unlawful and a violation of this section for any person to carry, keep, bear, transport or possess an assault weapon in the Village, ~~except when on his land or in his own abode, legal dwelling or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission~~, except that this section does not apply to or affect transportation of assault weapons that meet one of the following conditions:

(i) are broken down in a non-functioning state; ~~or~~ and
(ii) are not immediately accessible to any person; or

(iii) are unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card~~; or~~

(b) The provisions of this section do not apply to (i) any law enforcement officer, agent or employee of any municipality of the State of Illinois (ii) any law enforcement officer, agent or employee of the State of Illinois, of the United States, or of any other state (iii) any member of the military or other service of any state or the United States, including national guard and reserves officer, agent or employee of any municipality of the commonwealth, if the persons described are authorized by a competent authority to so carry an assault weapon loaded on a public way and such person is acting within the scope of his duties or training, or (iv) any qualified retired law enforcement officer, as that term is defined in 18 U.S.C. § 926C(c); however, any such assault weapon subject to the aforesaid exceptions under this section shall be safely transported in a locked container or equipped with a tamper-resistant mechanical lock or other safety device properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user, or broken down in a nonfunctioning state and not immediately accessible to any person, or unloaded and enclosed in a case, firearm carrying box, shipping box or other container by a person who has been issued a currently valid Firearm Owner's Identification Card, except as may otherwise be lawfully provided by the rules, regulations, general orders, ordinances or laws regulating the conduct of any such law enforcement officer, service member or qualified retired law enforcement officer.

Section 15-89. Penalty.

Any person who is found to have violated this Article shall be fined not less than $250 and not more than $1,000 for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues. Every person convicted of any violation under this Article shall, in addition to any penalty provided in this Code, forfeit to the Village any assault weapon.

Section 15-90. Disposition of Assault Weapon and Large Capacity Magazine.

Any person who, prior to the effective date of Ordinance No. ____, was legally in possession of an Assault Weapon or Large Capacity Magazine prohibited by this Article, shall have 60 days from the effective date of Ordinance No. ____, to do any of the following without being subject to prosecution hereunder:

(a) Remove, sell or transfer the Assault Weapon or Large Capacity Magazine from within the limits of the Village;

(b) Modify the Assault Weapon or Large Capacity Magazine either to render it permanently inoperable or to permanently make it a device no longer defined as an Assault Weapon or Large Capacity Magazine; or

(c) Surrender the Assault Weapon or Large Capacity Magazine to the Chief of Police or his or her designee for disposal as provided in Section 15-91 of this Article.

Section 15-91. Destruction of Assault Weapons and Lage Capacity Magazines.

The Chief of Police or his or her designee shall have the power to confiscate any assault weapon of any person charged with a violatio under this Article. The Chief of Police shall cause to be destroyed each Assault Weapon or Large Capacity Magazine surrendered or confiscated pursuant to this Article; provided, however, that no Assault Weapon or Large Capacity Magazine shall be destroyed until such time as the Chief of Police determines that the Assault Weapon or Large Capacity Magazine is not needed as evidence in any matter. The Chief of Police shall cause to be kept a record of the date and method of destruction of each Assault Weapon or Large Capacity Magazine destroyed pursuant to this Article.

SECTION 3: The Village Manager, or his designee, is authorized and directed to submit to the Illinois Department of State Police a copy of this Ordinance, 30 days after its adoption, and any such other measures as may be necessary to effect the requirements of 430 ILCS 65/13.3.

SECTION 4: If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

SECTION 5: This Ordinance, and each of its terms, shall be the effective legislative act of a home rule municipality without regard to whether such Ordinance should: (a) contain terms contrary to the provisions of current or subsequent non-preemptive state law; or, (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the corporate authorities of the Village of Deerfield that to the extent that the terms of this Ordinance should be inconsistent with any non-preemptive state law, this Ordinance shall supersede state law in that regard within its jurisdiction.

SECTION 6: This Ordinance shall be in full force and effect upon its passage and approval and shall subsequently be published in pamphlet form as provided by law.

PASSED this 2nd day of April, 2018.

AYES: Benton, Jester, Oppenheim, Seiden, Shapiro, Struthers

NAYS: None

ABSENT: None

ABSTAIN: None

APPROVED this 2nd day of April, 2018.

Village President Pro Tem

ATTEST:

Village Clerk

VILLAGE OF DEERFIELD
LAKE AND COOK COUNTIES, ILLINOIS

ORDINANCE NO. O-18-19

AN ORDINANCE APPROVING AMENDMENTS TO SECTION 15-87 OF THE MUNICIPAL CODE OF THE VILLAGE OF DEERFIELD

WHEREAS, on July 1, 2013, the Village President and Board of Trustees adopted Ordinance No. O-13-24, amending Chapter 18 of the Municipal Code of the Village of Deerfield (*"Village Code"*) to adopt a new Article 11 of Chapter 15, which Article 11 regulates the ownership and possession of assault weapons in the Village; and

WHEREAS, on April 2, 2018, the President and Board of Trustees adopted Ordinance No. O-18-06, amending Article 11 of Chapter 15 of the Village Code to further regulate the ownership and possession of assault weapons in the Village, pursuant to the authority set forth in Section 13.1(c) of the Illinois Firearms Owners Identification Card Act, 430 ILCS 65/13.1(c) (*"Act"*); and

WHEREAS, the President and Board of Trustees now desire to further amend Section 15-87 of Article 11 of Chapter 15 of the Village Code, pursuant to the authority set forth in Section 13.1(c) of the Act; and

WHEREAS, the President and Board of Trustees have determined that the amendment of Section 15-87 of the Village Code is in the best interests of the Village;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF DEERFIELD, LAKE AND COOK COUNTIES, ILLINOIS, in the exercise of its home rule powers, as follows:

SECTION 1: RECITALS. The recitals to this Ordinance are hereby incorporated into and made a part of this Ordinance as if fully set forth herein.

SECTION 2: AMENDMENT. Section 15-87 of Article 11 of Chapter 15 of the Village Code is hereby re-titled and amended further to read as follows:

> "Sec. 15-87. ~~Safe Storage Of~~ Assault Weapons and Large Capacity Magazines Prohibited; Exceptions:
>
> (a) It shall be unlawful to possess, bear, manufacture, sell, transfer, transport, store or keep any assault weapon or large capacity magazine in the village.
>
> (b) The provisions of this section, excluding those pertaining to the manufacture and sale of any assault weapon or large capacity magazine in the Village, do not apply to (i) any law enforcement officer, agent or employee of any municipality of the state of Illinois (ii) any law enforcement officer, agent or employee of the state of Illinois, of the United States, or of any other state (iii) any member of the military or other service of any state or the United States, including national guard and reserves, if the persons described are authorized by a competent authority to so carry an assault weapon loaded on a public way and such person is acting within the scope of his duties or training, or (iv) any qualified retired law enforcement officer, as that term is defined in 18 U.S.C. § 926C; however, any such assault weapon subject to the aforesaid exceptions under this section shall be safely stored and secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user, or broken down in a nonfunctioning state and not immediately accessible to any person, or unloaded and enclosed in a case, firearm carrying box, shipping box or other container by a person who has been issued a currently valid Firearm Owner's Identification Card, except as may otherwise be lawfully provided by the rules, regulations, general orders, ordinances or laws regulating the conduct of any such law enforcement officer, service member or qualified retired law enforcement officer."

SECTION 3: DELIVERY. The Village Manager, or his designee, is authorized and directed to submit to the Illinois Department of State Police a copy of this Ordinance, 30 days after its adoption, and any such other measures as may be necessary to effect the requirements of 430 ILCS 65/13.3.

#5836735_v1

SECTION 4: SEVERABILITY. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

SECTION 5: EXERCISE OF HOME AUTHORITY. The President and Board of Trustees declare that this Ordinance, and each of its terms, are and shall be the effective legislative act of a home rule municipality without regard to whether such Ordinance should: (a) contain terms contrary to the provisions of current or subsequent non-preemptive state law; or, (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the corporate authorities of the Village of Deerfield that to the extent that the terms of this Ordinance should be inconsistent with any non-preemptive state law, this Ordinance shall supersede state law in that regard within its jurisdiction.

SECTION 6: EFFECTIVE DATE. In accordance with Section 5/1-2-4 of the Illinois Municipal Code, 65 ILCS 5/1-2-4, the President and Board of Trustees have determined that the adoption of this Ordinance and its effectiveness is urgent for the public welfare of the Village and, therefore, upon the vote of two-thirds of the corporate authorities approving the Ordinance, it shall be in full force and take immediate effect.

[SIGNATURE PAGE FOLLOWS]

#58367735 v1

PASSED this 18th day of June, 2018.

AYES: Benton, Jester, Oppenheim, Seiden, Shapiro, Struthers

NAYS: None

ABSENT: None

ABSTAIN: None

APPROVED this 18th day of June, 2018.

Village President

ATTEST:

Village Clerk

#58367736_v1

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

Daniel D. Easterday, Illinois State Rifle Association, and Second Amendment Foundation, Inc.,	)	
Plaintiffs,	)	No. 18CH427
v.	)	
Village of Deerfield, Illinois, a Municipal Corporation,	)	
Defendant.	)	

ORDER

This case is the companion case to Guns Save Life, Inc. v. Village of Deerfield, Illinois, and Harriet Rosenthal, solely in her official capacity as Mayor of the Village of Deerfield, case No. 18CH498. Plaintiffs in this case join the Guns Save Life plaintiffs' preemption arguments under the Illinois Firearm Owners Identification Act and the Firearm Concealed Carry Act in case No. 18CH498 and seek a summary judgment and permanent injunction against the Village of Deerfield. For the reasons stated in this Court's order of March 22, 2019 in case 18CH498, which is attached and incorporated into this order, plaintiffs' motion for summary judgment and permanent injunction is granted.

IT IS HEREBY ORDERED THAT:

1. A permanent injunction is issued enjoining defendant Village of Deerfield, its agents, officials or police department from enforcing any provision of Ordinance No. 0-18-06 and Ordinance No. 0-18-19 making it unlawful to keep, possess, bear, manufacture, sell, transfer or

transport assault weapons or large capacity magazines as defined in these ordinances.

Entered this 22nd day of March 2019.

ENTERED:

Luis A. Berrones
Judge

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

Guns Save Life, Inc. and John William Wombacher, III.,	)	
Plaintiffs,	)	
v.	)	18CH498
Village of Deerfield, Illinois, and Harriet Rosenthal, solely in her official capacity as Mayor of the Village of Deerfield,	)	
Defenants.	)	

MEMORANDUM ORDER

Before the Court are plaintiffs' motion for a preliminary injunction and motion for summary judgment.[1] Plaintiffs initially sought a preliminary injunction but later filed a motion for summary judgment requesting a permanent injunction to permanently enjoin defendant Village of Deerfield from enforcing Ordinance No. 0-18-06 and Ordinance No. 0-18-19 which ban the ownership and possession of assault weapons and large capacity magazines.[2] The plaintiffs' seven count complaint challenges the validity of Deerfield's ordinances and alleges that: (1) Ordinance No. 0-18-06 is preempted by Illinois' Firearm Owners Identification Card Act (FOICA) and Firearm Concealed Carry Act (FCCA); (2) Ordinance No. 0-18-06 is preempted by

[1] The plaintiffs in the companion case of Daniel D. Easterday, Illinois State Rifle Association and Second Amendment Foundation, Inc. v. Village of Deerfield, Illinois, a municipal corporation, in case number 18CH427 join plaintiff Guns Save Life's motion for a preliminary injunction and motion for summary judgment.

[2] Plaintiffs identify Deerfield's ordinance as Ordinance No. 0-18-24-3, however, the Village of Deerfield attached a copy of the relevant ordinance as an exhibit to its response brief and the exhibit reflects that the correct number is 0-18-19. Ordinance No. 0-18-19 was passed by the Village of Deerfield following the Court's finding that Ordinance No. 0-18-06 did not ban firearm magazines that accept more than ten rounds. Deerfield stayed enforcement of Ordinance No. 0-18-19 pending the hearing and ruling on plaintiffs' request for a preliminary injunction. Plaintiffs did not file an amended complaint to challenge this new ordinance, however, the parties agreed that the hearing for a preliminary injunction should include a determination of the validity of Ordinance No. 0-18-19.

the Illinois Wildlife Code (Wildlife Code); (3) they are entitled to a declaratory judgment that Ordinance No. 0-18-06 does not ban large capacity magazines;[3] (4) Ordinance No. 0-18-06 and Ordinance No. 0-18-19 banning large capacity magazines are preempted by FOICA and the FCCA; (5) Ordinance No. 0-18-06 and Ordinance No. 0-18-19 banning large capacity magazines are preempted by the Wildlife Code; (6) Ordinance No. 0-18-06 and Ordinance No. 0-18-19 violate the Takings Clause of the Illinois Constitution; and (7) Ordinance No. 0-18-06 and Ordinance No. 0-18-19 violate the Eminent Domain Act.[4]

The defendants presented testimony in opposition to plaintiffs' request for a preliminary injunction. The Court heard the testimony of two witnesses, Harriet Rosenthal, the Village of Deerfield's President, and Kent S. Street, the Village Manager for the Village of Deerfield. President Rosenthal's and Mr. Kent's testimony related to of Deerfield's ability to regulate firearms under the state statutes and Deerfield's intent and reasons for passing the ordinances challenged by plaintiffs. The defendants' evidence also included a video clip of a June 17, 2013 Village Board meeting in which State Representative Scott Drury spoke during the public comments session and spoke about pending House Bill 183 relating to the State's regulation of firearms and firearm components. Plaintiffs objected to this evidence as being irrelevant because the issues before the Court can be decided as a matter of law and the Court need only consider the ordinances, the various state statutes and the Illinois Constitution. The Court reserved ruling on plaintiffs' objection. The Court now finds that the evidence presented by defendants at the October 12,

[3] This issue is now moot due to the passage of Ordinance No. 0-18-19.
[4] Plaintiffs in the Easterday case only raise a preemption challenge under the FOICA and FCCA to Deerfield's ordinances.

2018 preliminary injunction hearing is irrelevant to resolving the preemption issue. The preemption challenge only raises questions of law. The Court will therefore not consider the witnesses' testimony or the video recording with respect to plaintiffs' preemption challenges. For the following reasons, the Court grants plaintiffs' request for a summary judgment and enters a permanent injunction enjoying Deerfield from enforcing Ordinance No. 0-18-06 and Ordinance No. 0-18-19.

FACTS

The relevant facts are not in dispute. On July 1, 2013, Deerfield passed Ordinance No. O-13-24 titled "AN ORDINANCE REGULATING THE OWNERSHIP AND POSSESSION OF ASSAULT WEAPONS IN THE VILLAGE OF DEERFIELD". Ordinance No. 0-13-24: (1) defines what constitutes an assault weapon (§15-86); (2) defines what constitutes a large capacity magazine (§15-86); (3) mandates how assault weapons should be stored (§15-87); (4) mandates how assault weapons should be transported within Deerfield's village limits (§15-88); (5) makes it unlawful to carry or possess an assault weapon within Deerfield's corporate limits unless the person is on his land, his abode, legal dwelling or fixed place of business or unless the person is on the land or in the dwelling of another person as an invitee with that person's permission (§15-88); and (6) provides for a fine between $250.00 to $1,000.00 for each violation (§15-89). Ordinance No. 0-13-24 did not prohibit ownership or possession of an assault weapon or high capacity magazine within Deerfield's corporate limits. The purpose of Ordinance No. 0-13-24 is stated on page two in the final "Whereas" clause which provides: "[A]ssault weapons should be subject to safe storage and security requirements as provided herein to limit the opportunity for access and use of firearms by untrained or unauthorized users[.]"

On July 9, 2013, the Illinois legislature amended §13.1 of the FOICA. Section 13.1 of FOICA provides:

> Preemption.
>
> (a) Except as otherwise provided in the Firearm Concealed Carry Act and subsections (b) and (c) of this Section, the provisions of any ordinance enacted by any municipality which requires registration or imposes greater restrictions or limitations on the acquisition, possession and transfer of firearms than are imposed by this Act, are not invalidated or affected by this Act.
>
> (b) Notwithstanding subsection (a) of this Section, the regulation, licensing, possession, and registration of handguns and ammunition for a handgun, and the transportation of any firearm and ammunition by a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act are exclusive powers and functions of this State. Any ordinance or regulation, or portion of that ordinance or regulation, enacted on or before the effective date of this amendatory Act of the 98th General Assembly that purports to impose regulations or restrictions on a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act in a manner that is inconsistent with this Act, on the effective date of this amendatory Act of the 98th General Assembly, shall be invalid in its application to a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act.
>
> c) Notwithstanding subsection (a) of this Section, the regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State. Any ordinance or regulation, or portion of that ordinance or regulation, that purports to regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act, shall be invalid unless the ordinance or regulation is enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly. Any ordinance or regulation described in this subsection (c) enacted more than 10 days after the effective date of this amendatory Act of the 98th General Assembly is invalid. An ordinance enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly may be amended. The enactment or amendment of ordinances under this subsection (c) are subject to the submission requirements of Section 13.3. For the purposes of this subsection, "assault weapons" means firearms designated by either make or model or by a test or list of cosmetic features that cumulatively would place the firearm into a definition of "assault weapon" under the ordinance.
>
> (d) For the purposes of this Section, "handgun" has the meaning ascribed to it in Section 5 of the Firearm Concealed Carry Act.

> (e) This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.

430 ILCS 65/13.1 (West 2018).

On July 9, 2013, the Illinois legislature also passed the FCCA. The FCCA provides in part:

> Preemption.
>
> The regulation, licensing, possession, registration, and transportation of handguns and ammunition for handguns by licensees are exclusive powers and functions of the State. Any ordinance or regulation, or portion thereof, enacted on or before the effective date of this Act that purports to impose regulations or restrictions on licensees or handguns and ammunition for handguns in a manner inconsistent with this Act shall be invalid in its application to licensees under this Act on the effective date of this Act. This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.

430 ILCS 66/90 (West 2018).

> "Handgun" means any device which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas, or escape of gas that is designed to be held and fired by the use of a single hand."

430 ILCS 66/5 (West 2018).

On April 2, 2018 Deerfield passed Ordinance No. O-18-06 titled "AN ORDINANCE AMENDING CHAPTER 15 (MORALS AND CONDUCT), ARTICLE 11 (ASSAULT WEAPONS), SECTION 15-87 (SAFE STORAGE OF ASSAULT WEAPONS) AND SECTION 15-88 (TRANSPORTATION OF ASSAULT WEAPONS) OF THE MUNICPAL CODE OF THE VILLAGE OF DEERFIED TO REGULATE THE POSSESSION, MANUFACTURE AND SALE OF ASSAULT WEAPONS IN THE VILLAGE OF DEERFIELD". Ordinance No. 0-18-06 made minor changes to §15-86 dealing with definitions and made more extensive changes to: (1) §15-87 Safe Storage of Assault Weapons; (2) §15-88 Transportation of Assault Weapons; and (3) §15-89 Penalty. Ordinance No. 0-18-06 adopted two new sections, §15-90 addressing Disposition of Assault Weapon and Large Capacity

Magazine and §15-91 addressing Destruction of Assault Weapons and Large Capacity Magazines.

The additional provisions of Ordinance No. 0-18-06 that plaintiffs challenge are as follows:[5]

Sec. 15-87. Safe Storage of Assault Weapons; Exceptions

(a) ~~Safe Storage.~~ It shall be unlawful to possess, bear, manufacture, sell, transfer, transport, store or keep any assault weapon in the Village. ~~unless such weapon is secured in a locked container or equipped with a tamper resistant mechanical lock or either safety device, properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user. For purposes of this section such weapon shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user.~~

(b) ~~Self-defense exception. No person shall be punished for a violation of this section if an assault weapon is used in a lawful act of self-defense or in defense of another.~~

~~(c)~~ The provisions of this section, excluding those pertaining to the manufacture and sale of any assault weapon in the Village, do not apply to (i) any law enforcement officer, agent or employee of any municipality of the State of Illinois (ii) any law enforcement officer, agent or employee of the State of Illinois, of the United States, or of any other state (iii) any member of the military or other service of any state or the United States, including national guard and reserves, if the persons described are authorized by a competent authority to so carry an assault weapon loaded on a public way and such person is acting within the scope of his duties or training, or (iv) any qualified retired law enforcement officer, as that term is defined in 18 U.S.C. § 926C(c); however, any such assault weapon subject to the aforesaid exceptions under this section shall be safely stored and secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user, or broken down in a nonfunctioning state and not immediately accessible to any person, or unloaded and enclosed in a case, firearm carrying box, shipping box or other container by a person who has been issued a currently valid Firearm Owner's Identification Card, except as may otherwise be lawfully provided by the rules, regulations, general orders, ordinances or laws regulating the conduct of any

[5] All changes to the challenged ordnances are reflected by showing the additions with underscoring and the deletions with strikeouts in the text.

such law enforcement officer, service member or qualified retired law enforcement officer.

Section 15-88. Transportation of Assault Weapons; Exceptions.

(a) It is unlawful and a violation of this section for any person to carry, keep, bear, transport or possess an assault weapon in the Village, ~~except when on his land or in his own abode, legal dwelling or fixed place of business, or on the land or in the legal dwelling of another as an invitee with that person's permission~~, except that this section does not apply to or affect transportation of assault weapons that meet one of the following conditions:

(i) are broken down in a non-functioning state; ~~or~~ and
(ii) are not immediately accessible to any person; or
(iii) are unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card.~~; or~~

(b) The provisions of this section do not apply to (i) any law enforcement officer, agent or employee of any municipality of the State of Illinois (ii) any law enforcement officer, agent or employee of the State of Illinois, of the United States, or of any other state (iii) any member of the military or other service of any state or the United States, including national guard and reserves, if the persons described are authorized by a competent authority to so carry an assault weapon loaded on a public way and such person is acting within the scope of his duties or training, or (iv) any qualified retired law enforcement officer, as that term is defined in 18 U.S.C. § 926C(c); however, any such assault weapon subject to the aforesaid exceptions under this section shall be safely stored and secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user, or broken down in a nonfunctioning state and not immediately accessible to any person, or unloaded and enclosed in a case, firearm carrying box, shipping box or other container by a person who has been issued a currently valid Firearm Owner's Identification Card, except as may otherwise be lawfully provided by the rules, regulations, general orders, ordinances or laws regulating the conduct of any such law enforcement officer, service member or qualified retired law enforcement officer.

Section 15-89. Penalty.

Any person who is found to have violated this Article shall be fined not less than $250 and not more than $1,000 for each offense~~.~~ and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues. Every person convicted of any violation under this Article shall, in addition to any penalty provided in this Code, forfeit to the Village any assault weapon.

Section 15-90. Disposition of Assault Weapon and Large Capacity Magazine.

Any person who, prior to the effective date of Ordinance No. _____, was legally in possession of an Assault Weapon or Large Capacity Magazine prohibited by this Article, shall have 60 days from the effective date of Ordinance No. _____, to do any of the following without being subject to prosecution hereunder:

(a) Remove, sell or transfer the Assault Weapon or Large Capacity Magazine from within the limits of the Village;

(b) Modify the Assault Weapon or Large Capacity Magazine either to render it permanently inoperable or to permanently make it a device no longer defined as an Assault Weapon or large capacity Magazine; or

(c) Surrender the Assault Weapon or Large Capacity Magazine to the Chief of Police or his or her designee for disposal as provided in Section 15-91 of this Article.

Section 15-91. Destruction of Assault Weapons and Large Capacity Magazines.

The Chief of Police or his or her designee shall have the power to confiscate any assault Weapon of any person charged with a violation under this Article. The Chief of Police shall cause to be destroyed each Assault Weapon or Large Capacity Magazine surrendered or confiscated pursuant to this Article; provided, however, that no Assault Weapon or Large Capacity Magazine shall be destroyed until such time as the Chief of Police determines that the assault Weapon or Large Capacity Magazine is not needed as evidence in any matter. The Chief of Police shall cause to be kept a record of the date and method of destruction of each Assault Weapon or Large Capacity Magazine destroyed pursuant to this Article.

On June 12, 2018, this Court entered a temporary restraining order enjoining the Village of Deerfield, its agents, officials or police department from enforcing any provision of Ordinance No. 0-18-06 relating to the ownership, possession, storage or transportation of assault weapons or large capacity magazines within the Village of Deerfield. On June 18, 2018, the Village of Deerfield passed Ordinance No. 0-18-19 to correct an omission in §15-87 of

Ordinance No. 0-18-06 relating to high capacity magazines.[6] Deerfield also renamed §15-87 to reflect that this section no longer addressed the safe storage of assault weapons, but that Deerfield was now banning assault weapons and large capacity magazines. Section 15-87 now reads as follows:

SECTION 2: AMENDMENT. Section 15-87 of Article 11 of Chapter 15 of the Village Code is hereby re-titled and amended further to read as follows:

> "Sec. 15-87, ~~Safe Storage Of~~ Assault Weapons and Large Capacity Magazines Prohibited; Exceptions:
>
> (a) It shall be unlawful to possess, bear, manufacture, sell, transfer, transport, store or keep any assault weapon or large capacity magazine in the village.
>
> (b) The provisions of this section, excluding those pertaining to the manufacture and sale of any assault weapon or large capacity magazine in the Village, do not apply to (i) any law enforcement officer, agent or employee of any municipality of the State of Illinois (ii) any law enforcement officer, agent or employee of the State of Illinois, of the United States, or of any other state (iii) any member of the military or other service of any state or the United States, including national guard and reserves, if the persons described are authorized by a competent authority to so carry an assault weapon loaded on a public way and such person is acting within the scope of his duties or training, or (iv) any qualified retired law enforcement officer, as that term is defined in 18 U.S.C. § 926C(c); however, any such assault weapon subject to the aforesaid exceptions under this section shall be safely stored and secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user, or broken down in a nonfunctioning state and not immediately accessible to any person, or unloaded and enclosed in a case, firearm carrying box, shipping box or other container by a person who has been issued a currently valid Firearm Owner's Identification Card, except as may otherwise be lawfully provided by the rules, regulations, general orders, ordinances or laws regulating the conduct of any such law enforcement officer, service member or qualified retired law enforcement officer.

The Village of Deerfield delayed enforcement of Ordinance No. 0-18-19 pending resolution of

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[6] Deerfield characterizes Ordinance No. 0-18-19 as a clarification of that portion of Ordinance No. 0-18-06 that Deerfield claims bans ownership and possession of high capacity magazines. Deerfield's characterization of Ordinance No. 0-18-19 is wholly without merit as Ordinance No. 0-18-06 clearly failed to ban ownership or possession of high capacity magazines.

plaintiffs' challenge to Deerfield's authority to regulate possession or ownership of large capacity magazines.

Plaintiffs raise the following challenges to the validity of the ordinances: (1) Whether the State preempted Deerfield's authority to exercise concurrent power to regulate assault weapons or large capacity magazines pursuant to the Home Rule provisions of the Illinois Constitution. (2) Whether the changes to Ordinance No. 0-13-24 made by Ordinance No. 0-18-06 and Ordinance No. 0-18-19 are amendments to Ordinance No. 0-13-24 or new ordinances that are preempted by the provisions of FOICA, FCCA and the Wildlife Code. and (3) Whether Ordinance No. 0-18-16 and Ordinance No. 0-18-19 violate the takings clause of Article 1, Section 15 of the Illinois Constitution and §10-5-5 of the Eminent Domain Act.

ANALYSIS

Plaintiffs originally sought a preliminary injunction but after the evidentiary hearing plaintiffs filed a motion for summary judgment and now seek a permanent injunction. Summary judgment is appropriate when the pleadings, depositions, affidavits and the admissions of record when construed strictly against the moving party and liberally in favor of the opponent show that no genuine issue of material fact exists and that the moving party is entitled to a judgment as a matter of law. *Seymour v. Collins,* 2015 IL 118432, ¶42, 39 N.E.3d 961, 974; *Old Kent Bank – St. Charles, N.A. v. Surwood Corp.,* 256 Ill. App.3d 221, 229, 627 N.E.2d 1192, 1198 (2d Dist. 1994). The party moving for summary judgment has the burden to show that no genuine issue of material fact exists with respect to all issues including those issues raised by the pleading of affirmative defenses. *Old Kent Bank – St. Charles, N.A. v. Surwood Corp.,* 256 Ill. App.3d at 230, 627 N.E.2d at 1199; *West Suburban Mass Transit Dist. v.*

Consolidated Rail Corp., 210 Ill. App.3d 484, 488-89, 569 N.E.2d 187, 190 (1st Dist. 1991). A party seeking a permanent injunction to preserve the status quo indefinitely "must show that he possesses a clear, protectable interest for which there is no adequate remedy at law and that irreparable injury would result if the relief is not granted." *Sheehy v. Sheehy*, 299 Ill. App. 3d 996, 1003–04, 702 N.E.2d 200, 206 (1st Dist. 1998).

I. Preemption

Deerfield in the exercise of its home rule powers adopted Ordinance No. O-13-24. As a home rule unit, Deerfield's home rule power and the State's authority to limit such home rule authority is derived from Article 7, §6 of the Illinois Constitution which provides in relevant part:

> (a) ... Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.
>
> (h) The General Assembly may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit other than a taxing power or a power or function specified in subsection (l) of this Section.
>
> (i) Home rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive.

ILL. CONST. art. VII, § 6 (a), (h), and (i) (West 2018). Section 6(a) authorizes a home rule unit to exercise any power and perform any function pertaining to its government affairs except as limited by the State pursuant to Article 7, §6(h). Section 6(h) empowers the General Assembly to deprive home rule units from exercising any powers that the General Assembly determines should be exercised exclusively by the State. This preemption of home rule authority occurs

under Section 6(h) of the Illinois Constitution when the State specifically declares that the State's exercise of such power or function is exclusive.

Our Supreme Court in a comprehensive preemption opinion in *City of Chicago v. Roman*, 184 Ill.2d 504, 705 N.E.2d 81 (1998), discussed how the State preempts a home rule unit from acting on a subject that the State asserts exclusive power to regulate and how the State can limit the home rule unit's concurrent exercise of power without preempting that exercise of power. The Court held that: "[To] meet the requirements of section 6(h), legislation must contain express language that the area covered by the legislation is to be exclusively controlled by the State. *Id.*, 184 Ill.2d at 517, 705 N.E.2 at 89. The Court also stated that:

> When the General Assembly intends to preempt or exclude home rule units from exercising power over a matter, that body knows how to do so. In many statutes that touch on countless areas of our lives, the legislature has expressly stated that, pursuant to section 6(h) or 6(i), or both, of article VII of the Illinois Constitution, a statute is declared to be an exclusive exercise of power by the state and that such power shall not be exercised by home rule units.

Id. The Court then went on to discuss several examples of legislation where the legislature totally excluded or preempted home rule authority to regulate. These statutory provisions are:

1. Section 17 of the Illinois Health Facilities Planning Act which provides:

> It is hereby specifically declared that the powers and functions exercised and performed by the State pursuant to this Act **are exclusive to the State of Illinois** and that these powers and functions shall not be exercised, either independently or concurrently, by any home rule unit. 20 ILCS 3960/17 (West 1992) (emphasis added).

2. Section 2.1 of the Illinois Insurance Code which provides:

> Public Policy. It is declared to be the public policy of this State**, pursuant to paragraphs (h) and (i) of Section 6 of Article VII of the Illinois Constitution of 1970, th**at any power or function set forth in this Act to be **exercised by the State is an exclusive State power or function**. Such power or function shall not be exercised concurrently, either directly or indirectly, by any unit of local government, including home rule units, except as otherwise provided in this Act. ... [A]nd said Section 415 of this Act is declared to **be a**

denial and limitation of the powers of home rule units pursuant to paragraph (g) of Section 6 of Article VII of the Illinois Constitution of 1970. 215 ILCS 5/2.1 (West 1992) (emphasis added).

3. Section 21 of the Citizens Utility Board Act which provides:

> Home rule preemption. The provisions of this Act are declared to be **an exclusive exercise of power by the State of Illinois pursuant to paragraphs (h) or (i) of Section 6 of Article VII of the Illinois Constitution**. No home rule unit may impose any requirement or regulation on any public utility inconsistent with or in addition to the requirements or regulations set forth in this Act. 220 ILCS 10/21 (West 1992) (emphasis added).

4. Section 6 of the Medical Practice Act of 1987 which provides:

> It is declared to be the public policy of this State, **pursuant to paragraphs (h) and (i) of Section 6 of Article VII of the Illinois Constitution of 1970**, that any power or function set forth in this Act to be exercised by the State **is an exclusive State power or function**. Such power or function shall not be exercised concurrently, either directly or indirectly, by any unit of local government, including home rule units, except as otherwise provided in this Act. 225 ILCS 60/6 (West 1992) (emphasis added).

5. Section 6-18 of the Liquor Control Act of 1934 which provides:

> No home rule unit, as defined in Article VII of the Illinois Constitution, may amend or alter or in any way change the legal age at which persons may purchase, consume or possess alcoholic liquors as provided in this Act, and it is declared to be the law of this State**, pursuant to paragraphs (h) and (i) of Section 6 of Article VII of the Constitution**, that the establishment of such legal age is an **exercise of exclusive State power** which may not be exercised concurrently by a home rule unit. 235 ILCS 5/6--18 (West 1992) (emphasis added).

6. Section 7 of the Missing Children Registration Law which provides:

> Home rule. This Article shall constitute the **exercise of the State's exclusive jurisdiction** pursuant to **subsection (h) of Section 6 of Article VII of the Illinois Constitution** and **shall preempt the jurisdiction of any home rule unit**. 325 ILCS 55/7 (West 1992) (emphasis added).

7. Section 2 of the Burial of Dead Bodies Act which provides;

> No home rule unit, as defined in Section 6 of Article VII of the Illinois Constitution, may

> change, alter or amend in any way the provisions contained in this Act, and it is declared to be the law of this State, **pursuant to subsections (h) and (i) of Section 6 of Article VII of the Illinois Constitution,** that powers and functions authorized by this Act **are the subjects of exclusive State jurisdiction,** and no such powers or functions may be exercised concurrently, either directly or indirectly, by any home rule unit. 410 ILCS 5/2(c) (West 1992) (emphasis added).

8. Section 2 of the Wildlife Code which provides:

> The regulation and licensing of the taking of wildlife in Illinois are **exclusive powers and functions of the State**. A home rule unit may not regulate or license the taking of wildlife. This Section is **a denial and limitation of home rule powers** and functions under **subsection (h) of Section 6 of Article VII of the Illinois Constitution.** 410 ILCS 5/2 (West 1992) (emphasis added).

9. Section 11-208.2 of the Illinois Vehicle Code which provides:

> Limitation on home rule units. The provisions of this Chapter of this Act limit the authority of home rule units to adopt local police regulations inconsistent herewith except pursuant to Sections 11-208, 11-209, 11-1005.1, 11-1412.1, and 11-1412.2 of this Chapter of this Act. 625 ILCS 5/11–208.2 (West 1992) (emphasis added).

The General Assembly may limit a home rule unit's concurrent exercise of power without completely preempting such power through partial exclusion or conformity. *City of Chicago v. Roman,* 184 Ill.2d at 519, 705 N.E.2d at 90. "[T]he General Assembly knows how to accomplish this, and has done so countless times, expressly stating that, pursuant to article VII, section 6(i), of the Illinois Constitution, a statute constitutes a limitation on the power of home rule units to enact ordinances that are contrary to or inconsistent with the statute". *Id.*, 184 Ill.2d at 520, 705 N.E.2d at 90. Examples of statutes in which the State through its expression in the statute provided for partial exclusion or conformity of a home rule unit's authority to exercise its power to regulate over those matters are:

1. Section 5-919 of the Illinois Highway Code which provides:

> Home Rule Preemption. A home rule unit may not impose road improvement impact fees in a manner inconsistent with this Division. This Division is a limitation under

> subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units of powers and functions exercised by the State. 605 ILCS 5/5–919 (West 1992).

2. Section 8 of the Carrier and Racing Pigeon Act of 1984 which provides:

> This Act applies to all municipalities and counties and pursuant to paragraph (i) of Section 6 of Article VII of the Constitution, this Act is a limitation upon the power of home rule units to enact ordinances contrary to this Act. 510 ILCS 45/8 (West 1992).

The preemption language in the FOICA and the FCCA mirrors the language in those statutes our Supreme Court has stated have totally excluded or preempted a home rule unit's authority to regulate. The preemption language in FOICA states:

> (b) Notwithstanding subsection (a) of this Section, the regulation, licensing, possession, and registration of handguns and ammunition for a handgun, and the transportation of any firearm and ammunition by a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act **are exclusive powers and functions of this State.** (emphasis added).
>
> c) Notwithstanding subsection (a) of this Section, the regulation of the possession or ownership of assault weapons **are exclusive powers and functions of this State.** (emphasis added).
>
> (e) This Section is **a denial and limitation of home rule powers and functions under subsection (h)** of Section 6 of Article VII of the Illinois Constitution. (emphasis added).

The language in the FCCA states:

> Any ordinance or regulation, or portion thereof, enacted on or before the effective date of this Act that purports to impose regulations or restrictions on licensees or handguns and ammunition for handguns in a manner inconsistent with this Act shall be invalid in its application to licensees under this Act on the effective date of this Act. **This Section is a denial and limitation of home rule powers and functions under subsection (h)** of Section 6 of Article VII of the Illinois Constitution. (emphasis added).

The language in FOICA and FCCA clearly state that home rule units no longer have the authority to regulate or restrict the licensing and possession of handguns and handgun ammunition with respect to a holder of a valid Firearm Owner's Identification Card or a holder of a license to

carry a concealed firearm. In addition, §13.1(c) of FOICA clearly deprives home rule units of the authority to regulate the possession or ownership of assault weapons. Deerfield, therefore, may no longer regulate in these areas.

The plaintiffs also claim that the Wildlife Code preempts Deerfield's ability to regulate assault weapons and large capacity magazines. The Wildlife Code provides:

> The regulation and licensing of the taking of wildlife in Illinois are exclusive powers and functions of the State. A home rule unit may not regulate or license the taking of wildlife. This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.

410 ILCS 5/2 (West 1992). The Wildlife Code does specifically preempt regulation and licensing of the taking of wildlife and references what types of firearms may be used to accomplish the taking of wildlife. The Wildlife Code, however, is a statute regulating the hunting and taking of game in Illinois and not a statute regulating ownership and possession of firearms. Any regulation as to what firearms may be used to hunt is secondary to the subject matter the State is preempting in the Wildlife Code. Moreover, nothing presented to the Court shows that the taking of wildlife occurs within Deerfield's borders or that the challenged ordinances have any impact on the taking of wildlife outside of Deerfield's borders.

Deerfield claims that the language in §13.1 allowing for inconsistent ordinances and amendments shows the legislature did not intend to preempt this area. The Court does not agree. The specific language in §13.1(e) of FOICA repeats and emphasizes the General Assembly's intent to preempt by stating: "This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution. 430 ILCS 65/13.1(e) (West 2018). This final provision in the statute's preemption section leaves no doubt what the General Assembly intended to do; and that is to preempt the regulation of

this subject matter. The Illinois Constitution prescribes the extent of a home rule unit's authority to exercise power over matters preempted by the State. When the State preempts an area by declaring that it is exercising exclusive power to regulate specific matters as provided for in the Illinois Constitution, and passes a law that incorporates and declares that it is exercising that exclusive power pursuant to Section 6(h)of Article VII of the Illinois Constitution, the only result that can follow from the use of this Constitutional language is to deprive the home rule unit of all authority to regulate in that area. To accept Deerfield's argument requires this Court to dilute the State's constitutional authority and the mandate of our Illinois Constitution under Article 7, §6(h). The legislature is presumed to know the law and if the State wished to allow home rule units to have authority to regulate in this area through partial exclusion or conformity it has the knowledge and ability to do so.

Deerfield also asserts that in interpreting statutes the Court should give all statutory provisions meaning and effect; however, the cases relied upon by Deerfield make clear that the Court is to interpret statutes this way "if possible". In this case it is not possible to accept Deerfield's argument without diminishing the language in Section 6(h), Art. VII of the Illinois Constitution. Deerfield's position requires the Court to hold that Section 6(h) doesn't mean what it says. If the General Assembly did not wish to preempt regulation of this subject matter, the General Assembly can amend its statute. This Court will not ignore the meaning and consequences of our Illinois Constitution's provisions to accommodate Deerfield's statutory interpretation. Thus, Deerfield lost its authority to regulate possession or ownership of assault weapons and large capacity magazines when the State passed §13.1 of FOICA and the FCCA.

Deerfield also claims that Ordinance No. 0-18-06 is an amendment to Ordinance No. 0-

13-24 which was validly enacted in accordance with the ten-day window FOICA provided home rule units to pass inconsistent ordinances. Plaintiffs assert that the changes to Deerfield's ordinance was not an amendment but was an entirely new ordinance that does not comply with the preemption exception in the FOICA. In determining whether changes to an ordinance are amendments or a new ordinance repealing the prior ordinance, our Supreme Court and Appellate Court have provided clear guidelines for the trial courts. Deerfield's characterization of Ordinance No. O-18-06 as an amendment of Ordinance No. O-13-24 is not dispositive of whether it is an amendment or a new ordinance that repealed the prior ordinance. "Where an amendatory ordinance is enacted which re-enacts some of the provisions of the former ordinance, such portions of the old ordinance as are repeated or retained, either literally or substantially, are to be regarded as a continuation of the old ordinance and not as the enactment of a new ordinance on the subject or as [the] repeal of the former ordinance." *Village of Park Forest v. Wojciechowski,* 29 Ill.2d 435, 438, 194 N.E.2d 346, 348 (1963); *Athey v. City of Peru,* 22 Ill. App.3d 363, 367, 317 N.E.2d 294, 297 (3d Dist. 1974). If, however, there is a clear conflict between the two ordinances where both cannot be carried out, then an intention to repeal will be presumed. *Nolan v. City of Granite City,* 162 Ill. App.3d 187, 188, 514 N.E.2d 1196, 1199 (5th Dist. 1987). To resolve the issue of whether the changes are an amendment or a new ordinance, the court must perform a comparative analysis of the ordinances and analyze all its terms. *Athey v. City of Peru,* 22 Ill. App.3d at 367-368, 317 N.E.2d at 297-298.

In comparing the language of Ordinance No. 0-13-24 to the language of Ordinance No. 0-18-06 there exists significant differences between the two ordinances. Ordinance No. 0-13-24 only regulated transportation and storage of assault weapons within Deerfield's village limits

and provided for penalties for improperly transporting or storing such weapons. While §§15-87 and 15-88 of Ordinance No. 0-18-06 keep the same titles these sections had in Ordinance No. 0-13-24 (§15-87 Safe Storage of Assault Weapons; Exceptions, §15-88 Transportation of Assault Weapons; Exceptions); the new text in Ordinance No. 0-18-06 under these sections does not deal with transporting or storing assault weapons but instead bans such weapons. Ordinance No. 0-13-24 did not ban ownership or possession of assault weapons or large capacity magazines within Deerfield's village limits. The banning of assault weapons is substantively different than regulations regarding the transportation and storage of such weapons by one who owns or possesses assault weapons. In addition, there are two sections that are entirely new. Section 15-90 Disposition of Assault Weapon and Large Capacity Magazine and §15-91 Destruction of Assault Weapons and Large Capacity Magazines in Ordinance No. 0-18-06 that are not found in Ordinance No. 0-13-24. These additional sections in Ordinance No. 0-18-06 supports plaintiffs' claim that the changes to Ordinance No. 0-13-24 resulted in a new ordinance and not an amended ordinance. For these reasons Ordinance No. 0-18-06 is a new ordinance and not an amendment.

Even if the Court agreed with Deerfield's interpretation of §13.1 of FOICA that the General Assembly only meant to partially exclude a home rule unit's authority to regulate possession and ownership of large capacity magazines and assault weapons; and that Deerfield's Ordinance No. 0-18-06 is an amendment of Ordinance No. 0-13-24, Deerfield's Ordinance No. 0-18-06 is still unenforceable under plaintiffs' preemption argument because Deerfield missed the 10-day window provided under §13.1(c) of FOICA. This section of FOICA clearly states that the 10-day window is to allow home rule units an opportunity to pass

ordinances that regulate possession or ownership of assault weapons that are "inconsistent" with FOICA. FOICA allows possession or ownership of assault weapons by any person who has been previously issued a Firearm Owner's Identification Card by the State Police. 430 ILCS 65/2(a)(1) (Firearm Owner's Identification Card required; exceptions.) and 430 ILCS 65/1.1 (defining firearm). Nothing in Ordinance No. 0-13-24 is "inconsistent" with any provision of FOICA as this ordinance merely regulates the transportation and storage of assault weapons. In giving the language of §13.1(c) its plain meaning FOICA provided home rule units a one-time 10-day window from the date of this section's effective date to ban ownership or possession of assault weapons. Deerfield clearly failed to enact such a ban within this ten-day window and therefore, lost its opportunity to do so and cannot later amend its ordinance to impose such a ban. Deerfield's assertion that this interpretation of §13.1(c) effectively deletes the language permitting amendments to ordinances passed during this 10-day window is not persuasive. The purpose of the amendment provision in §13.1(c) is to allow a home rule unit to expand its timely ban of assault weapons if the initial ordinance did not address all weapons that could have been classified as assault weapons, or if new assault type weapons not fitting into the ordinance's assault weapon definition began to be manufactured or became available for purchase. For example, if Ordinance No. 0-13-24 had banned the assault weapon defined in §15-86(2) and several years later a manufacturer came out with a semiautomatic rifle that had a fixed magazine that only accepted ten rounds of ammunition such a weapon would not be an assault weapon as defined in the ordinance. Deerfield could arguably amend Ordinance No. 0-13-24 to redefine assault weapons to include semiautomatic rifles that have fixed magazines that accept ten rounds if Deerfield determined that these new semiautomatic rifles posed the

same threat to safety as those semiautomatic rifles that have fixed magazines that accept more than ten rounds. In this scenario, an amendment might be authorized.

II. Takings Clause and Eminent Domain

Plaintiff's last challenge to Ordinance No. 0-18-06 and Ordinance No. 0-18-19 is that the ordinances violate Article 1, Section 15 of the Illinois Constitution and §10-5-5 of the Eminent Domain Act, 735 ILCS 30/10-5-5 (West 2018). For the reasons stated in this Court's order of June 12, 2018, plaintiffs have not met their burden for the issuance of a preliminary injunction under these theories and genuine issues of material fact exist that preclude the entry of a summary judgment and permanent injunction under these theories.

III. THE COURT'S FINDINGS

The Court finds that: (1) Ordinance No. 0-18-06 and Ordinance No. 0-18-19 are preempted by the FOICA and the FCCA and therefore unenforceable. (2) Ordinance No. 0-18-06 and Ordinance No. 0-18-19 are new ordnances and not amendments to Ordinance No. 0-13-24 and are therefore preempted by FOICA and FCCA. (3) FOICA provided home rule units up to ten days from the effective date of FOICA's preemption provision to pass ordinances that regulate possession or ownership of assault weapons that are inconsistent with the regulations of assault weapons in FOICA. Nothing in Ordinance No. 0-13-24 is inconsistent with FOICA's regulation of assault weapons, therefore, Deerfield missed its opportunity to ban assault weapons and cannot do so now with Ordinance No. 0-18-06. (4) There is no genuine issue of material fact that Deerfield's ordinances are preempted and that plaintiffs: (a) have a clearly ascertainable right to not be subject to a preempted and unenforceable ordinance's prohibitions, fines, penalties and confiscation of property; (b) will suffer irreparable harm if an

injunction is not entered; and (c) do not have an adequate remedy at law. (5) Genuine issues of material fact exist with respect to plaintiffs' takings claim under the Illinois Constitution and the Eminent domain statute. and (6) The Wildlife Code does not preempt Deerfield's regulation of assault weapons or large capacity magazines.

IT IS HEREBY ORDERED THAT:

1. A permanent injunction is issued enjoining defendant Village of Deerfield, its agents, officials or police department from enforcing any provision of Ordinance No. 0-18-06 and Ordinance No. 0-18-19 making it unlawful to keep, possess, bear, manufacture, sell, transfer or transport assault weapons or large capacity magazines as defined in these ordinances.

2. A status hearing is scheduled on May 3, 2019 at 9:00 a.m. in courtroom C-204.

Entered this 22nd day of March 2019. **ENTER:**

_____

Judge

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS
CHANCERY DIVISION

DANIEL D. EASTERDAY, ILLINOIS STATE RIFLE ASSOCIATION, and SECOND AMENDMENT FOUNDATION, INC., Plaintiffs, v. VILLAGE OF DEERFIELD, ILLINOIS, a municipal corporation, Defendant.	Case No. 18 CH 427
GUNS SAVE LIFE, INC. and JOHN WILLIAM WOMBACHER III, Plaintiffs, v. VILLAGE OF DEERFIELD, ILLINOIS, and HARRIET ROSENTHAL, solely in her official capacity as Mayor of the Village of Deerfield, Defendants.	Case No. 18 CH 498 ***[consolidated with Case No. 18 CH 427]***

[PROPOSED] ORDER

This matter having come before the Court on Defendants' Motion for a Finding Pursuant to Rule 304(a), all parties having appeared and the Court being fully advised in the premises, it is hereby Ordered: over Plaintiffs' Objections

(1) The Court's March 22, 2019 Memorandum Order in Guns Save Life, et al. v. Village of Deerfield, Case No. 18 CH 498, is amended to include a finding pursuant to Rule 304(a) of the Illinois Supreme Court Rules that the Court's Ruling was final and appealable for purposes of Rule 304(a) as to Counts I-IV of the Guns Save Life Plaintiffs' First Amended Complaint. Further the Court's entry of a permanent injunction is similarly final and appealable pursuant to Rule

304(a). There is no just reason for delaying either enforcement or appeal of those rulings.

(2) The Court's March 22, 2019 Order concerning the companion case Easterday, et al. v. Village of Deerfield, et al., Case No. 18 CH 427, is also amended to include a finding pursuant to Rule 304(a) of the Illinois Supreme Court Rules that the Court's Ruling was final and appealable for purposes of Rule 304(a) as to the Court's entry of a permanent injunction. There is no just reason for delaying either enforcement or appeal of that ruling.

(3) The Court's Order of July 27, 2018 consolidating these cases "for all purposes" addressed both of these cases which "might have been brought as a single action." The purpose and effect of that Order was to have them "merged into one action, thereby losing their individual identity, to be disposed of as a single suit." *Busch v. Mison*, 385 Ill. App. 3d 620, 624 (1st Dist. 2008).

(4) The status hearing set for October 4, 2019 at 9:00 am ~~shall include all parties in the Easterday and Guns Save Life cases~~ is stricken and reset for February 28, 2019 at 9:00am.

Dated: _____

ENTER:

Judge R. Buscema
JUDGE

Order Prepared by:
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STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

IN THE CIRCUIT COURT OF THE 19th JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

DANIEL D. EASTERDAY, ILLINOIS STATE RIFLE ASSOCIATION and SECOND AMENDMENT FOUNDATION, INC., Plaintiffs, -vs- VILLAGE OF DEERFIELD, ILLINOIS, a Municipal corporation, Defendant.	Case No. 18 CH 427
GUNS SAVE LIFE, INC. and JOHN WILLIAM WOMBACHER, III, Plaintiffs, -vs- VILLAGE OF DEERFIELD, ILLINOIS, and HARRIET ROSENTHAL, solely in her Official capacity as Mayor of the Village of Deerfield, Defendants.	Case No. 18 CH 498

REPORT OF PROCEEDINGS had in the above-entitled cause before the HONORABLE LUIS A. BERRONES, on the 6th day of September, A.D., 2019, a.m. proceedings.

APPEARANCES:

MR. DAVID G. SIGALE,
appeared on behalf of the Plaintiffs in 18 CH 427;

MESSRS. CHRISTOPHER B. WILSON and JOHN B. SAMPLE, IV,
appeared on behalf of the Village of Deerfield;

MESSRS. CHRISTIAN D. AMBLER and BRIAN J. BARNES,
appeared on behalf of the Plaintiffs in 18 CH 498.

Reported by
Lauren A. DeBoer, CSR, RMR, CRR, Official Court Reporter
License No. 084-002190.

THE COURT: Easterday vs. Village of Deerfield.

Okay. The case is before the Court on defendant Easterday's -- excuse me -- Defendant Village of Deerfield's motion for a finding pursuant to Rule 304(a). The matter had been previously appealed when the Court granted summary judgment and entered a permanent injunction against Deerfield enjoining Deerfield from enforcing their ordinance which banned what they identified as assault weapons and large capacity magazines.

The Appellate Court dismissed the appeal based on a jurisdictional issue, whether the -- well, specifically because the permanent injunction with respect to Guns Save Life was not a final and appealable order, and it could not determine with respect to the Easterday case or the appeal whether that in fact was a final and appealable order.

The parties have come back or Deerfield has come back seeking the Court to enter 304(a) findings in order to be able to appeal the entry of a permanent injunction enjoining Deerfield from enforcing their assault weapon ban ordinance.

The parties have briefed the issue. The cases were consolidated a year ago, two years ago; well, a

year ago by the Court, and because the Appellate Court's opinion in dismissing the appeal mentions that it cannot make a determination whether the Easterday case's time for appeal had lapsed at the time that the notice of appeal was filed or whether it was still an interlocutory order with respect to -- because of the consolidation, this Court now is in a position where the parties have requested that the Court determine what effect a consolidation of these two cases had, whether the cases maintain their separate identity or whether the Easterday case was merged into the Guns Save Life case which affects how the matters would proceed with respect to the Appellate Court's jurisdiction.

Counsel for Deerfield has made their argument with respect to why he believes the motion to consolidate resulted in a merger of the cases. Counsel for Mr. Easterday has made his argument with respect to why he believes the cases were not merged and remain two separate cases and therefore 304(a) language would not be necessary or is irrelevant with respect to the Easterday case because the time for appeal started to run at the time that the permanent injunction was entered because that was the only count -- there was only one count in the Easterday case and that count was the subject of the Court

entering the permanent injunction.

Counsel for Guns Save Life, Inc. was about to make an argument with respect to why they believe that the cases were not merged when the Court suggested that a court reporter be present for the rest of the arguments and the Court's rulings specifically because the Court is aware of certain matters dealing with the procedures that are followed by the clerk's office that are not public, that are internal policies, and these procedures, at least my understanding of these procedures have occurred because of other cases that have been consolidated and what I've been told with respect to how the clerk handles this, and I was going to relate that to the parties so that they have an opportunity to digest that and argue whatever they want to from it. But here's the Court's understanding: The clerk does not unfortunately -- let me back up.

The other issue that was before the Appellate Court was that there was not a complete record with what the intent of the parties was with respect to the motion to consolidate. Because there was no formal motion to consolidate filed, both these matters at one point were two separate cases that were before this Court, and as the Court was reminded and it did refresh my recollection, it was the Court's suggestion that the cases

be consolidated. So the Court sua sponte suggested that there being no objection from the parties, the Court consolidated the matters for all future proceedings on July 27, 2018. There was an order entered and the order simply reads, "This matter is consolidated," being the Guns Save Life case under Number 18 CH 498 into 18 CH 427 (Easterday versus Village of Deerfield) for all future proceedings.

Now, with respect to the Court's understanding of how the clerk deals with matters that have been consolidated. The Court's recordkeeping computer system is under CRIMS, C-R-I-M-S, all caps, which is a very limited -- has very limited capabilities. It does not have the capabilities of taking a case that has been filed and merge it or put it together under one case number if they've been consolidated. The clerk treats these cases and maintains two separate files on these cases. It does not consolidate the matters even if they're merged for it to be one file under one number. That's why when cases are consolidated, the caption contains both numbers and both files are in fact because the clerk does make copies of everything that is filed now under their E-filing system are maintained with copies of both documents. So the fact that two docket numbers exist

is really more a function of a policy and procedure of the clerk's file more so than anything that this Court intended as far as two separate cases. It is just that our computer system is not set up to deal with that issue, and to get an application to do that I'm told is costly and something that the County Board will not approve.

We are seeking or we are taking bids for a different records system that will be implemented and may address this issue at some point, but -- and one of the things the Court looks at is whether two docket files or two docket entries have been maintained, and I don't want an internal policy procedure to really be dispositive of why things are done. The Court will fall on its sword and say that it's partly to blame with respect to these two different orders being entered because the Court is aware of this procedure that occurs so that is why the Court entered a 20-plus memorandum order in the Guns Save Life case was because part of it was because there were more counts in that case and a separate two-page order in the Easterday case which with each case having its own docket number even though the matters had been consolidated.

The other, I guess, issue that I would raise to the parties is this: Originally these two cases were assigned to two different judges. I believe the -- and I

can't remember which one, I think it was the Easterday case, was originally assigned to Judge Marcouiller, and that the Easterday case wound up before this Court because there was a substitution of judge that was taken from Judge Marcouiller as a matter of right and this Court being the only other chancery division or docket was assigned both cases. Ultimately both cases were before this Court.

Mr. Easterday has taken the position that these matters were consolidated for the convenience of the Court or for judicial economy and for the convenience of the parties. The way I view this is that that had already occurred at the time that these cases were both transferred to this case because that's merely a scheduling order; you know, judicial economy, convenience of the parties could be rectified by the Court scheduling both matters at the same time without consolidating. So the fact that, you know, consolidation that may occur for purposes of judicial economy and convenience of the parties is really a nonstarter as far as looking at these two cases because that from a practical perspective could have been done without consolidation. So having said that, you know, go ahead and --

MR. BARNES: Just for the record, I'm Brian

Barnes for the Guns Save Life plaintiffs.

I guess the first thing I'd say, your Honor, is that as I mentioned before, I think it's really important that the courts follow clear rules based on publicly available information when they're making these kinds of decisions because they do go to a collar jurisdiction.

And so I think the relevant inquiry here and I would submit it's an inquiry for the Appellate Court rather than the trial court, the relevant inquiry is based on the public information that existed on March 22nd after this Court issued its two orders in these cases, what did Deerfield know about how it should proceed with respect to the appeal?

And if that's the question, and I think that's the right way of thinking about this question, given the importance of clear rules when it comes to sorting out how to proceed on appeal and with respect to these jurisdictional issues that relate to the filing of notices of appeal, then the information that existed after this Court issued its ruling made clear that Deerfield was obliged to immediately appeal in the Easterday case. And Deerfield didn't know, we didn't know, the Easterday plaintiffs didn't know about the internal recordkeeping

practices of the Lake County Court Clerk, and for that reason, I would submit that it's not relevant.

What is relevant is the fact that the Second District issued an opinion that outlines the relevant legal tests for determining whether the two cases had merged; that under that test, one of the key factors is whether or not the cases proceeded on separate dockets, and another of the key factors is to look at the filings in the case and see whether the parties and the Court regarded the two matters as one case or two.

This Court in its orders on March 22nd referred to Easterday as the companion case to Guns Save Life. That statement does not make sense if there was in fact only one case before the Court at that time. And so irrespective of the Court's subjective intent when it consolidated the cases, irrespective of the stakes with respect to --

THE COURT: Well, isn't that relevant? I mean even the Appellate Court in its dismissal of the appeal in the remand says it needed information with respect to the parties' intent and the Court's intent. That's irrelevant I mean and the parties' intent is based on what pleadings have been filed or what motion has been filed and the reasoning for it, the reason for consolidation. That is a

subjective intent.

MR. BARNES: Respectfully, your Honor, I disagree. I think that the critical question is based on the record, the complete record which we have in the trial court that the Second District didn't have before the complete record, but based on the record what should Deerfield have done, how should it have proceeded given the docket that existed on March 22nd after this Court ruled? And the answer to that question is clear.

THE COURT: Okay. Mr. Sigale, do you want to say anything else?

MR. SIGALE: Your Honor, presumably the Court is well familiar with the various types of consolidation and no doubt has consolidated numerous cases in numerous situations.

I submit to the Court that if the Court meant to merge the cases such that they were intertwined to the point where one lost its identity, the Court would have ordered as such in the consolidation order.

I also submit to the Court that had the Court said at the time of consolidation this case is being merged such that one of these cases is losing its identity -- and most likely it would have been the GSL case, they had the higher number -- they would have been

jumping up and down objecting that their case was being subsumed into mine. Why? Because they have their own case with their own legal theories and they wanted to prosecute their own claim. And besides the fact of having the lower number and our own legal theories and our own desire on behalf of our plaintiffs to prosecute our claim, had the Court said that the case was being merged such that our, the Easterday case, was going to lose its identity and be subsumed into the GSL case, we would have been jumping up and down objecting; hang any idea of judicial economy and convenience, we would have said we want our day in court.

There was no discussion and the order doesn't reflect any idea of merger. The Court's orders before and after the consolidation notwithstanding the court docketing system, there's nothing in the court order after consolidation that says this docketing system is merely -- or this second order is merely clerical, this case has been merged into the other case, and therefore this order is really superfluous, but clerical needs dictate that the second order be issued.

I agree with counsel for GSL that what is going to be important I believe should be consistency to an Appellate Court which even in the Busch vs. Mison case

says that where an action involves an inquiry into the same events in its general aspects, the actions may be tied together but with separate docket entries, verdicts and judgment.

That's exactly what happened in this case. Computer system or not, it's exactly what happened. The plaintiffs, to the extent now that we have a reporter and the parties' intent is a relevant factor, it was never the Plaintiffs' intent to do anything other than prosecute its own case. It accepted that the two cases were in the same courtroom --

THE COURT: Why would merger prohibit you from just prosecuting your own case? I mean you earlier answered when I asked you does the merger mean that you took on the additional counts that Guns Save Life had in their complaint, you said no, if that merged that wouldn't be the case. So why wouldn't you still be able to prosecute your case even if merger occurred?

MR. SIGALE: Because one of the two cases would be subsumed into the other.

THE COURT: But you still have a party. I mean you may have one case, but you still have a party in that case. And, frankly, you two did not give me with respect to the preemption argument which is the only count you

had, there was really not a divergence in theory or approach to it, I mean you both argued the same thing with respect to the Illinois Constitution and then how the Illinois -- the state legislature's statute preempted Deerfield's ability to regulate assault weapons based on the Illinois Constitution and the language of the statute.

MR. SIGALE: I'm not arguing that there was no overlap; there was in fact a little bit of overlap. There was a common defendant and a common claim.

THE COURT: It was all the same argument. It wasn't just a little bit of overlap, it was basically the same argument.

MR. SIGALE: But I think the answer to the Court's question is why would I still have objected and jumped up and down is because the TRO had been granted separately, then the cases get consolidated and the plaintiffs have no idea what that's going to mean going forward. All we know is that so far we had a ruling in our favor. Now, here's a situation potentially if merger had been announced where suddenly it might not be in our hands, we don't -- we didn't --

THE COURT: Well, with respect to the TRO, though, the distinction, though, is this: Is that a TRO is immediately appealable. I mean this issue has arisen

because there was a permanent injunction issued, and it's final; if that was the only relief that was necessary if the matters were not consolidated and merged, if they didn't merge, then it was final with respect to your client.

This is somewhat of a unique situation. I mean you're -- to look at what happened in the past really doesn't have an impact on what's going forward with respect to the permanent injunction because a TRO, you wouldn't have this issue, the Appellate Court doesn't have jurisdiction I mean under the code or under the Supreme Court rules, that would have been immediately appealable, and this issue is unique because now a permanent injunction, and the Appellate Court made a point in the opinion when it dismissed the appeal, it's not an interlocutory, it's not final when you have other parties still in this litigation.

MR. SIGALE: To the extent, though, that the issue is the parties' intent at the time of consolidation, what I'm representing to the Court is that if I had been told that they were being put together, I would have objected and demanded to be -- to know that I had the ability and the freedom to make sure that I could make my own claims and present my own case.

THE COURT: Okay.

MR. SIGALE: It didn't -- it was a different story when it was consolidation for convenience and judicial economy because that is more of a scheduling thing, and I knew that we would -- as I felt we did -- get the opportunity to make our own case. But had we been told that we were being subsumed into them, and I assume if they had been told, they, GSL -- I'm sorry, court reporter -- if GSL had been told that they were being subsumed into us and losing their identity and there was a risk they wouldn't be able to make their own case, they would have objected to the consolidation as well. But they can say that for themselves I'm sure, and the fact is is that looking at everything that's in the record, everything meets the second type of consolidation, even in the Busch vs. Mison case where merger was found and this still doesn't meet that, it meets the other one.

THE COURT: Mr. Wilson?

MR. WILSON: I think Mr. Sigale's confusing the three different types of consolidation. The type he's talking about is where you stay one case and allow the other case to go forward. That's when he would be jumping up and down saying --

MR. SIGALE: I'm not --

THE COURT: Let him talk.

MR. WILSON: They both -- a merged case simply means that you need 304 language in both cases for an interlocutory appeal.

And so the question is were these cases merged? And that really is a question for your Honor. But one thing is that the order says this matter is consolidated into 18 CH 427. The cases were -- they were nesting at that point. They certainly looked like merged cases. They certainly were treated like merged cases. The procedure here is notable.

The Guns Save Life case filed a motion for summary judgment. Mr. Sigale didn't. Then we both argued in October, and after argument, Mr. Sigale filed a motion to join in Guns Save Life's summary judgment motion, he joined in the whole thing. So when the two orders were entered, I think there's some confusion about was this final? did he need Rule 304(a) language? That's not before the Court.

The question is did the cases merge such that you needed 304 language in order to appeal both parties, and the text of the order certainly fits with the cases where they say the cases have been merged, the nature of the case, they're both test cases. There's

nothing unique about the plaintiffs; Mr. Easterday and Mr. Wombacher were interchangeable. There weren't any facts -- they were challenging an ordinance, they were interpreting a state statute. They were doing the same thing. These cases -- the idea that Mr. Easterday would have just shot up on his appeal ahead of Guns Save Life, and that wouldn't have been something they'd be jumping up and down about is a really strange credulity.

These cases came to the Court essentially as consolidated cases and the order of July 27th should have merged them. It says the case will be consolidated into for all future proceedings. That's the type of language that's been interpreted as a merger of the cases. I think what your Honor pointed out with the CRIMS system is that this entire project that some courts do about, well, what about the docket? what about separate entries? is irrelevant to this consideration. And with that taken out, these are absolutely merged cases. And it only makes sense that for both cases to go up on appeal at the same time, the idea that these cases were heard for a TRO together, these cases were briefed together, these cases were argued together, these cases were decided together and now they're separate on appeal just simply makes no sense.

So we would argue the cases have been merged. They could have been brought together as a single action. The order was very broad. Every Court that's interpreted both of those situations has found cases to be merged. That's the Busch vs. Mison case and also the Dowe case. The other cases dealt with the Filson case and the Castell case both dealt with narrow orders that did not combine cases for all future proceedings. The FG case is two sets of competing parents who wanted to adopt a child whose parents had their parental rights terminated. That couldn't have been brought as a single action; they were competing parents. So that doesn't fit this case at all. This case lines up with Busch vs. Mison and Dowe and the fact that the Court didn't find a way to get around the docket system and enter a single docket entry simply is not dispositive, and that's the only thing they're relying on.

THE COURT: Okay. All right. I reviewed the parties' briefs. I read the Appellate Court's opinion in the original appeal that was dismissed because of lack of jurisdiction and the language that the Court used as I've noted earlier, when you read the cases dealing with consolidation whether there was a merger of the cases or not, the cases, they all talk about the parties' intent.

Here because again this is -- and the Court will take responsibility for the unique posture of this case because it was the Court who suggested or I guess strongly suggested consolidating the cases once the case that was before Judge Marcouiller had been transferred to this Court after being granted, after one of the parties being granted a substitution of judge.

In the initial appeal of this matter, the Court does make a point of stating: The criteria that this Court has to apply in order to determine whether the cases were merged or not, the Court does go on to say the supporting record does not contain a motion for consolidation, which is correct, there was no written motion for consolidation filed in this case, nor does the record contain any reports of proceedings. Thus, we have no way of knowing why the parties and/or the trial court believe that consolidation was appropriate or the Court's intent was to merge the actions. And, again, as I've mentioned earlier, this is -- and they're specifically asking about the Court's intent.

Having said that, I mean the Court is aware of the types of consolidation. The cases set forth that consolidation takes on three different -- there are three different types of consolidation. There's one where the

actions are pending. They involve the same subject matter. The Court may stay proceedings in all but one of the cases and determine whether the disposition of one action may settle the others. That is not the case here, I mean there was no issue with respect to staying. The dispute is between whether the second type of consolidation or the third type of consolidation applies.

And the second type of consolidation that may occur is where several actions involve an inquiry into the same event in its general aspects, and I emphasize the word general aspects, the actions may be tied together but with separate docket entries which we do have here, verdicts and judgments. I guess one may argue that there were two different judgments entered by the Court because there were two separate orders, and there is no dispute that there are two separate docket entries because the clerk has maintained the two court files; however, the Court has explained why those two facts exist the way they do, and I understand your argument that you have to look at what the public may know, but frankly, if the Court is aware of certain policies and procedures that are being implemented and used and that affects what the Court does, I think it -- the Court cannot ignore that. I can't ignore the fact that I do certain things because I'm

forced to in order to keep a record for the public to look at. And the consequences of that that occur I think you still have to say well, why did you do what you did? And the fact is that I did it because of what I believe is how the clerk deals with their records keeping, and I don't think it's appropriate, especially in a court of equity, to ignore that. And if I'm wrong, I guess I'll be told that, but I think that the explanation as to why separate dockets and the separate -- the two orders were entered as opposed to one order has been explained earlier by the Court, and that that really is not relevant to this particular case because in other situations, that is an objective you look at, this is what was done. But here there are underlying factors that may not be known to the public which need to be considered by the Court and may be considered by the Appellate Court at some point. They may tell me, do you know what? you're right and the Court's wrong. But I think at this point that the Court can consider those and will consider them.

The third type of consolidation -- then, you know, the second type still goes, you know, but with separate docket entries, verdicts and judgments; the consolidation being limited to a joint trial.

And this consolidation under the number two

that occurs for the most part it's done because of judicial economy and for the convenience of the parties. And, again, judicial economy and convenience of the parties really is not a relevant issue in this court since both cases were before this Court, that could have very easily been accomplished just by scheduling orders. And I have done that before where I have two cases that are very related and there's no formal consolidation, but one needs to keep track of the other so we don't have any inconsistent verdicts or judgments or orders, and that's done through a scheduling order.

The third type is where there are several actions pending which might have been brought as a single action. The case may be merged into one action thereby losing their individual identity to be disposed of in one suit. And quite frankly, based on the order that was entered and the Court's comment, that was the Court's intent, to have one case in front of it, not to have two separate cases. There is really no distinction between your one-count complaint with respect to the preemption argument and the one count of a multiple-count complaint that was filed by the Guns Save Life, Inc. plaintiffs.

Having said that, the Court's going to find that there was a consolidation with respect to these two

cases that merged the case into the other one and therefore there was one single action.

And I take it there's no objection to entering 304(a) language with respect to the permanent injunction at this point?

MR. BARNES: None from the Guns Save Life plaintiffs.

THE COURT: I take it grudgingly, I mean you want to get this issue before the Appellate Court on both issues, so.

MR. SIGALE: Yeah, I guess so. If they're not objecting, I won't object.

THE COURT: Okay. The Court will enter an order with respect to granting the motion with respect to the 304(a) language that this is a final -- this order should be appealed now at this point, there's no reason to delay it.

MR. WILSON: We've attached to our motion the order that reflected that. I have a copy.

MR. SIGALE: I need to take a look at it.

THE COURT: Why don't you take a look at it. I also will need an order with respect to the ruling on the consolidation. Or is that included?

MR. WILSON: It's included.

THE COURT: Is it? Okay.

MR. BARNES: One other housekeeping item, your Honor. I told Mr. Wilson this earlier this morning, but one of our plaintiffs in the Guns Save Life's case, Mr. Wombacher, I learned recently that he moved out of Deerfield. There are other members of Guns Save Life's that still reside in Deerfield and own firearms that qualify as assault weapons under the Deerfield ordinance and own magazines that qualify as large-capacity magazines under the Deerfield ordinance. So I don't think any of this affects the -- you know, the fact that we have a live controversy on the Guns Save Life side of things, but I wanted to let the Court know that that had happened.

THE COURT: Are you going to be amending your complaint?

MR. BARNES: I don't think so at this point given that we're all headed up on appeal.

THE COURT: All right. Well, I was actually talking for a future date depending on what the ruling is. I guess depending on what the ruling is, this issue may be moot.

MR. SIGALE: I'll let counsel take a look.

MR. WILSON: Your Honor, thank you. So we have an October 4th status date before you.

THE COURT: We may as well strike that.

MR. WILSON: We probably need to push it out farther.

THE COURT: Yeah. Did I give you a longer date originally when it was first appealed?

MR. WILSON: Yeah, when we appeared in May.

THE COURT: This can be off the record.

(Which were all of the proceedings had in the above-entitled cause on said date and time.)

STATE OF ILLINOIS)
) SS.
COUNTY OF L A K E)

I, Lauren A. Perrone-DeBoer, CSR, RMR, CRR, Official Court Reporter for the 19th Judicial Circuit, Lake County, Illinois, do hereby certify that I reported in shorthand before JUDGE LUIS A. BERRONES, judge of said court, in the above-entitled cause on the 6th day of September, 2019, and thereafter caused to be transcribed into typewriting the foregoing transcript which I hereby certify is a true and correct transcription of my shorthand notes so taken of the evidence offered and received on said date before said judge.

Lauren A DeBoer

_____

Official Court Reporter

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

FILED
JUL 27 2018
Eric Cartwright Weinstein
CIRCUIT CLERK

Guns Save Life, et al

vs.

Village of Deerfield, et al

Case No. 18 CH 498

ORDER (p. 2 of 2)

This matter before the court for status, due notice to all parties, the court fully advised in the premises, It is hereby ordered:

This matter is consolidated with 18 CH 427 (Eastaday v. Village of Deerfield) for all future proceedings.

ENTER:

Luis A. Berrones
JUDGE

Dated this 27th day of July, 2018.

Luis A. Berrones

Prepared by:
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171-94 (Rev. 10/11)

APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

DANIEL D. EASTERDAY, ILLINOIS STATE RIFLE ASSOCIATION, AND SECOND AMENDMENT FOUNDATION, INC
Plaintiff/Petitioner

Reviewing Court No: 2-19-0879
Circuit Court No: 2018CH000427
Trial Judge: LUIS A. BERRONES

v.

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E-FILED
Transaction ID: 2-19-0879
File Date: 12/2/2019 11:15 AM
Robert J. Mangan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

VILLAGE OF DEERFIELD, ILLINOIS, A MUNICIPAL CORPORATION
Defendant/Respondent

Consolidated Circuit Court No: 2018CH000498

CERTIFICATION OF RECORD

The record has been prepared and certified in the form required for transmission to the reviewing court. It consists of:

1 Volume(s) of the Common Law Record, containing 1569 pages
1 Volume(s) of the Report of Proceedings, containing 305 pages
1 Volume(s) of the Exhibits, containing 2 pages

I do further certify that this certification of the record pursuant to Supreme Court Rule 324, issued out of my office this 2 DAY OF DECEMBER, 2019

Erin Cartwright Weinstein

(Clerk of the Circuit Court or Administrative Agency)

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LAKE COUNTY, ILLINOIS

DANIEL D. EASTERDAY, ILLINOIS STATE RIFLE ASSOCIATION, AND SECOND AMENDMENT FOUNDATION, INC

Plaintiff/Petitioner

Reviewing Court No: 2-19-0879
Circuit Court No: 2018CH000427
Trial Judge: LUIS A. BERRONES

v.

VILLAGE OF DEERFIELD, ILLINOIS, A MUNICIPAL CORPORATION

Defendant/Respondent

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Defendant/Respondent

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CERTIFICATE OF SERVICE

Under penalties as provided by law, pursuant to Section 1-109 of the Illinois Code of Civil Procedures, the undersigned attorney certifies that he served the foregoing DEFENDANTS-APPELLEES' BRIEF AND APPENDIX as well as the document(s) referred to herein to whom it is directed by electronically filing the document and supporting documents with the Clerk of the Illinois Supreme Court via the Court's ECF system and emailing same to all counsel of record indicated below on June 23, 2021:

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